

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

CODIFYING ERROR ON FIVE-YEAR REVIEWS UNDER TITLE R510

On 06/01/2007, the Department of Human Services, Division of Aging and Adult Services filed Five-Year Notices of Review and Statements of Continuation on Rules R510-1, R510-101, R510-102, R510-103, R510-106, R510-107, R510-108, R510-109, R510-110, R510-111, R510-200, R510-302, and R510-400, which were effective 06/01/2007. On 06/06/2007, the Division of Administrative Rules updated the Utah Administrative Code to include all rule filings effective on 06/01/2007.

Subsequent to the update of the Utah Administrative Code, but before the Five-Year Notices of Review and Statements of Continuation were published in the Utah State Bulletin, the Division of Administrative Rules (DAR) determined that the filings were incomplete. DAR notified the Division of Aging and Adult Services of the problem. The Division of Aging and Adult Services withdrew these filings with the intent to file these Five-Year Notices of Review and Statements of Continuation again at a later date.

DAR has corrected the history note appearing at the end of each rule in the Utah Administrative Code to indicate the proper Notice of Continuation date. DAR regrets any confusion this action may have caused.

If you have any questions regarding any of these corrections, please contact Michael G. Broschinsky, Administrative Code Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114, phone: (801) 538-3003, FAX: (801) 538-1773, or Internet E-mail: mbroschi@utah.gov.

End of the Editor's Notes Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 2, 2007, 12:00 a.m., and June 15, 2007, 11:59 p.m. are included in this, the July 1, 2007, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (· · · · ·) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least July 31, 2007. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through October 29, 2007, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by Section 63-46a-4; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Agriculture and Food, Animal Industry
R58-8
Testing and Vaccination of Bovine
Livestock for Brucellosis Control

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 30045
 FILED: 06/08/2007, 15:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2004 legislative session, H.B. 92 was passed that caused the Brucellosis Rule to be in conflict with new laws (Section 4-31-16.5). (DAR NOTE: H.B. 92 (2004) is found at Chapter 325, Laws of Utah 2004, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: This action deletes the rule due to conflict with the existing law. The rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-31-16.5 and Subsection 4-2-2(1)(j)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The state does not own any cattle and livestock inspectors employed by the state are already on the premises for other reasons. There is neither a cost or savings.
- ❖ LOCAL GOVERNMENTS: Local government is not involved in the enforcement of this rule plus they do not own any cattle and therefore would not be impacted by this.
- ❖ OTHER PERSONS: Those cattlemen that choose not to vaccinate will save money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost. The reason there is no cost is because we are repealing the regulation eliminating the enforcement cost associated to this rule by both the Department of Agriculture and Food and livestockmen.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The request to have this rule repealed will eliminate any fiscal impact that the affected industry may have experienced. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY UT 84116-3034, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Earl Rogers, or Terry Menlove at the above address, by phone at 801-538-7103, 801-538-7162, or 801-538-7166, by FAX at 801-538-7126, 801-538-7169, or

801-538-7169, or by Internet E-mail at kmathews@utah.gov, erogers@utah.gov, or tmenlove@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R58. Agriculture and Food, Animal Industry.

~~[R58 8. Testing and Vaccination of Bovine Livestock for Brucellosis Control:~~

~~R58 8 1. Authority:~~

~~— Promulgated under Subsection 4-2-2(1)(j) and Section 4-31-16.~~

~~R58 8 2. Requirements:~~

~~— Before bovine livestock change ownership, testing and/or vaccination for brucellosis must be verified and/or the bovine livestock must meet the applicable animal health requirements. The livestock operation shall show proof of testing and/or vaccination to a representative of the Utah Department of Agriculture and Food. This proof shall be noted and a document made available to accompany the livestock as they are moved. In the event the foregoing requirements have not been met, the cattle shall not be moved.~~

~~KEY: disease control~~

~~Date of Enactment or Last Substantive Amendment: 1987~~

~~Notice of Continuation: February 13, 2002~~

~~Authorizing, and Implemented or Interpreted Law: 4-31-16; 4-2-2(1)(j)]~~

Agriculture and Food, Regulatory
Services
R70-330
Raw Milk for Retail

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 30100
 FILED: 06/14/2007, 16:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to: 1) bring the wording and intent of the administrative rule in line with the language of the Utah Dairy Act that was modified by H.B. 311 in the 2007 legislative session; and 2) implement regulatory changes to address gaps identified by a large raw milk associated outbreak of Campylobacteriosis along the Wasatch Front in early 2007. (DAR NOTE: H.B. 311 (2007) is found at Chapter 165, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) prohibition of Cow Share Programs; 2) provisions for selling raw milk at self owned retail stores; 3) testing frequency for unpackaged raw milk sold on premises, packaged raw milk sold on premises, and packaged raw milk sold at self-owned retail stores; 4) specifying types of micro-bacteriological tests to be run on milk sold at self-owned retail stores; 5) requirements for a hazard analysis and critical control point plan for all raw for retail dairies; 6) details of provisions for Pathogen testing program for raw milk sold at self owned retail stores; and 7) modification of labeling guidelines for raw for retail milk.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 3; and H.B. 311 (2007)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The rule upgrades the standards for raw milk. This could increase the regulatory investment of the Utah Department of Agriculture and Food (UDAF). However, this will be offset by increasing the effectiveness of the regulatory actions. The rule also places most of the financial cost of the follow-up sampling and inspections onto the producer, as explained under "Cost for Affected Persons" below. The higher standards in this rule will keep down the costs to other state agencies involved with investigation of disease outbreaks.

❖ LOCAL GOVERNMENTS: The rule places no responsibilities on local government. There should be no costs or savings to them. The higher standards in this rule will keep down the costs of local agencies involved with investigation of disease outbreaks.

❖ OTHER PERSONS: The rule will reduce the potential costs of medical care for raw milk consumers as an aggregate and will reduce the costs to the economy due to missed productivity of workers who get sick from consuming raw milk.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be extra inspections and sampling of dairies which failed the standards. There are fees for this extra work. The frequency will vary from producer to producer depending on herd health, facility sanitation, and other factors. Re-sampling performed by Compliance Officers at \$36.75 per hour. Re-testing performed by State Dairy Testing Laboratory: Standard Plant Count - \$10; Coliform Count - \$25; Antibiotic Test - \$ 5; Phosphatase Test - \$15; DSCC Test - \$5; DMSCC Confirmation \$15; Coliform Confirmation \$5; Pathogen Testing; Listeria monocytogenes - \$30; Salmonella - \$28; Campylobacter jejuni - \$30; E. Coli 0157:H7 - \$18. In the proposed regulations, existing raw milk dairies (there are four) will be required to retrofit their milk-holding tanks with temperature data recorders. The cost will vary depending on the age and make of the existing tank. The cost is estimated at around \$1,000 each to meet this requirement. The costs associated with tests being conducted by a certified-independent third party laboratory could be higher than the cost estimates from the State Dairy Lab.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will impose additional testing and equipment purchase requirements on those

affected by rule. These requirements are being implemented as per the legislative mandate of H.B. 311 and to minimize public health risks associated with consuming raw milk. The department's analysis of the fiscal impacts are covered in the accompanying comments for this rule and are reflective of our cost estimates associated with implementation. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard W Clark, Don McClellan, or Kathleen Mathews at the above address, by phone at 801-538-7150, 801-538-7145, or 801-538-7103, by FAX at 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at RICHARDWCLARK@utah.gov, dmcclellan@utah.gov, or kmathews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/26/2007 at 1:00 PM, UDAF, Main Conference Room, 350 N Redwood Rd, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-330. Raw Milk for Retail.

R70-330-1. Authority.

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the production, distribution, and sale of raw milk for retail.

C. History: The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborn disease involving Salmonella and Campylobacter infections directly linked to the consumption of un-pasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of salmonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of Escherichia coli (E. coli) 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

R70-330-2. [Raw Milk Defined] Definitions.

~~Raw milk for retail shall be milk as defined by law that has not been pasteurized. The word milk shall be interpreted to include the~~

normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.

] A. "Raw milk" means milk as defined by law that has not been pasteurized, or heat treated. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.

B. "Properly staffed" means a person or persons on premise available to sell milk, exchange money, and lock and secure the retail store.

C. "Quarterly pathogen testing verification" means a sample from the Raw for Retail batch is aseptically split by the Regulatory agency and tested for the prescribed pathogens at both the independent laboratory and the department laboratory and the results are evaluated and compared.

D. "Department" means the Utah Department of Agriculture and Food.

R70-330-3. Permits.

A permit shall be required to sell raw milk for retail. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated. Cow-share programs, as defined in the Utah Dairy Act, shall not be allowed, either in conjunction with a permitted raw for pasteurization dairy, a permitted raw milk for retail dairy, or in lieu of a permit to sell raw milk for retail.

R70-330-4. Building and Premises Requirements.

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, (2) the washing of returned multi-use containers when applicable, and (3) a sales room for the sale of raw milk in a properly protected area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse. If the Raw for Retail dairy also raises chickens or other poultry, for meat and/or eggs, their housing and movement shall be restricted to areas that do not include the milkhouse, milk barn and their immediate surroundings, the corrals and alleys where there is normally cows or goats, and other locations where there is normal cow or goat traffic. They shall also be restricted from areas normally considered traffic areas of the raw milk customers.

R70-330-5. Sanitation and Operating Requirements.

[A. The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of unpasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of salmonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of E. coli O157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

—B]A. Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization. Milk packaging areas and container

washing areas at the raw milk facilities shall meet the requirements for Grade A pasteurized milk processing plants.

[C]B. All milk shall be cooled to 50 degrees F. or less within one hour of the commencement of milking and to 41 degrees F. or less within two hours after the completion of milking[.][provided that the blend temperature after the first milking and subsequent milkings does not exceed 50 degrees F. Milk not handled in this manner may be deemed adulterated and shall not be sold.]

C. The blend temperature after the first milking and subsequent milkings shall not exceed 50 degrees. Milk not handled in the manner required in this subsection and subsection "B" above shall be deemed adulterated and shall not be sold.

1. All raw for retail farm bulk milk tanks shall be equipped with an approved temperature-recording device, in addition to the indicating thermometer.

2. The recording device shall be operated continuously and be maintained in a properly functioning manner. Circular recording charts shall not overlap.

3. The recording device shall be verified as accurate every six (6) months and documented in a manner acceptable to the department.

4. Recording thermometer charts shall be maintained on the premises for a minimum of six (6) months and available to the department.

5. The recording thermometer shall be installed near the milk storage tank and accessible to the department.

6. The recording thermometer shall comply with the current technical specifications in the Pasteurized Milk Ordinance (PMO) for tank recording thermometers.

7. The recording thermometer charts shall properly identify the producer, date, and signature of the person removing the chart.

D. [The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged. The sale shall be to consumers for household use and not for resale. The sale of block cheese, when held at 35 degrees F. for 60 days or longer, may be sold at retail or for wholesale distribution, at locations other than the premise where the milk was produced.]The temperature of the milk at the time of bottling shall not exceed 41 degrees F.

E. [All products made from raw milk including cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah to individual consumers due to potential negative public health implications of such products.]The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged, or at a self owned, properly staffed, retail store. Sanitation and construction requirements of the facilities used as self owned, retail stores shall be the same as those contained in the Wholesome Food Act, Title 4, Chapter 5. Transportation shall be done by the producer with no intervening storage, change of ownership, or loss of physical control. The temperature of the milk shall be maintained at 41 degrees F or below. Each display case shall have a properly calibrated thermometer, and a daily temperature log shall be maintained and made accessible to the Department.

F. Raw Milk block cheese, when held at 55 degrees F. for 60 days or longer, may be sold at retail stores or for wholesale distribution, at locations other than the premise where the milk was produced.

G. Except as provided in part (F) above, all products made from raw milk including, but not limited to, cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah.

H. Milk that has been heat treated, shall not be labeled as "Raw Milk" for retail sale.

I. Inspections of the self owned retail store shall be performed no less than four times per year to insure compliance with the sanitation, construction, and cooling requirements as set forth in the Wholesome Food Act, Title 4, Chapter 5.

R70-330-6. Testing.

A. Raw Milk for Retail Testing.

1. ~~[The requirements, standards, and enforcement procedures for testing raw milk for retail to include: added water, antibiotics, pesticides, and/or other adulterants shall be the same as those used for raw milk for Grade A.]~~Unpackaged Raw Milk

a. The Department shall collect a representative sample of milk from each Raw for Retail farm bulk tank once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Raw Milk for Pasteurization as found in the PMO, and in addition shall include added water, and/or other adulterants. Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or a contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.

b. The standards for testing Somatic Cell Count (SCC) in raw milk for retail shall be, the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml) for cows, and not to exceed 1,000,000 ml for goats. The requirements for sampling, and the enforcement procedures for SCC shall be the same as those set forth in 1.a. above.

c. The bacterial standards shall be a Standard Plate Count (SPC) of no more than 20,000 per ml. and a coliform count of no more than 10 per ml.

2. ~~[The requirements, standards, and enforcement procedures for testing for Somatic Cell Count (SCC) in raw milk for retail, shall be that the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml).]~~ Packaged Raw Milk sold on Premise

a. It shall be the responsibility of the Department to collect a representative sample of packaged raw milk once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Grade "A" Pasteurized milk as found in the PMO. Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or a contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated. When a sample produces a violative Coliform count of more than 10 per mL, the count shall be enumerated and the sample transferred to appropriate laboratory facilities for pathogen testing.

3. ~~[The requirements, standards, and enforcement procedures for testing for bacteria and coliform shall be the same as those prescribed for Grade A pasteurized milk. The bacterial standard shall be a Standard Plate Count (SPC) of no more than 20,000 per ml.; Coliform count shall not exceed 10 per ml.]~~ Packaged Raw Milk sold at Self-Owned Retail Stores

a. It shall be the responsibility of the producer to have a third party sampler certified by the Department to collect a sample from each batch of milk delivered to the retail store by obtaining one container of milk at the store and submitting it to a certified third party laboratory to be tested for Antibiotic Drug Residue, Standard Plate Count (SPC) and Coliform Count. All containers of milk from the sampled batch shall be withheld from sale until the results of the tests are known. Whenever a sample result exceeds the standard in any of the prescribed categories, the producer shall not allow the milk to enter into commerce and shall dispose of the milk in a manner agreeable to the Department.

b. It shall be the responsibility of the Department to collect at the operator's expense or oversee collection of a representative sample of packaged raw milk once each month for screening for the presence of *Listeria monocytogenes*, *Salmonella*, *Campylobacter jejuni*, and *E. Coli* 0157:H7. All samples shall be delivered to the State Dairy Testing Laboratory or other laboratories approved by the department. Test results showing any growth or activity shall be considered positive. If any of the screening test results are positive, then a confirmation test shall be performed.

Whenever any of the test results for any the prescribed pathogens are positive, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or contracted approved independent laboratory, meeting PMO/Department standards, and until an inspection can be performed at the facility by the Department. All expenses for the re-sampling, re-testing, and re-inspecting shall be born by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.

c. A hazard analysis and critical control point (HACCP) System including a milk testing procedure for specified pathogens shall be required, and approved by the department, for all raw for retail dairies.

d. The HACCP System shall include plans and policies for initiating and conducting a recall in the event of a positive pathogen test result.

e. The HACCP System shall include the seven following principles:

- (i) Conduct hazard analysis
- (ii) Determine the critical control points
- (iii) Establish critical limits
- (iv) Establish monitoring procedures
- (v) Establish corrective actions
- (vi) Establish verification procedures
- (vii) Establish record-keeping and documentation procedures.

f. Prior to the implementation of a HACCP plan, develop, document and implement written Prerequisite Programs (PPs). The HACCP Plan, along with the PPs becomes the HACCP System. Steps to producing the HACCP Plan and System are found in the U.S. National Advisory Committee on Microbiological Criteria for Food (NACMCF) document.

g. The HACCP plan shall identify and address points in the production, distribution, transportation and retail display system where the milk may become contaminated or held in conditions that support the growth of pathogens.

(i) When tests are performed by an independent laboratory, quarterly pathogen testing verification shall be conducted by the Department.

(ii) Independent laboratories shall participate in an annual split sampling program testing the capacity of the pathogen methodology directed by this rule, and results sent to the Department.

h. The producer shall recall all milk from the failed batch that is already in commerce.

i. A database shall be kept and made available for review by both the Utah Department of Agriculture and Food and the Utah Department of Health of all customers, which shall include names, addresses, and telephone numbers of customers, dates of purchases and amounts of milk purchased.

j. If another agency's epidemiological investigation finds probable cause to implicate a raw for retail dairy in a milk born illness outbreak, the Raw for Retail Permit shall be suspended by the Department until such time as milk samples are pathogen free when analyzed by the Department or other Department approved testing laboratories, and until an inspection can be performed at the facility by a Compliance Officer from the Department.

B. Animal Health Tests.

1. General herd health examination. Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by [the California Mastitis Test (CMT)]a method recommended by the PMO, shall include a statement of the udder health of each animal, and a general systemic health evaluation.

2. Tuberculosis testing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

3. Brucellosis testing. Each animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days prior to the beginning of each lactation. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

4. Bulk tank milk testing. All raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11.

C. Personnel Health.

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the department once each year ~~or~~ and shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

R70-330-7. Packaging and Labeling.

A. Label Requirements.

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "~~[Studies have established a direct causal link between gastrointestinal disease and the consumption of raw milk.]~~Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one ~~[sixteenth]~~half inch.

6. ~~[Other provisions of labeling laws in effect in Utah as they apply to dairy/food products.]~~The shelf life labeling of bottled raw milk shall include a pull date, expiration date, or best-if-used-by date, and shall be displayed and clearly visible on raw milk. Raw milk shall not be sold after the pull date, expiration date, or best-if-used-by date has expired, and the date shall not be more than nine days after packaging.

7. ~~Other provisions of labeling laws in effect in Utah as they apply to dairy/food products.~~

B. Products not labeled as required shall be deemed misbranded.

KEY: ~~[food]~~dairy inspection, raw milk

Date of Enactment or Last Substantive Amendment: ~~[June 2, 2004]~~2007

Notice of Continuation: March 16, 2006

Authorizing, and Implemented or Interpreted Law: 4-3-2



Agriculture and Food, Regulatory Services

R70-560

Inspection and Regulation of Cottage Food Production Operations

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 30062

FILED: 06/12/2007, 09:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to implement Section 4-5-9.5.

SUMMARY OF THE RULE OR CHANGE: This rule implements Section 4-5-9.5 from H.B. 339 that was passed by the 2007 Legislature. It provides regulations for the production of nonhazardous food produced in-home and intended for sale to the public. It defines the approval process for foods and facilities; and gives requirements for production, inspections, registration, labeling, storage, distribution, regulatory jurisdiction, and enforcement and penalties. (DAR NOTE: H.B. 339 (2007) is found at Chapter 339, Laws of Utah 2007, and was effective 04/30/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-5-9.5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division anticipates a significant cost to state budget, based on feedback received since the

law was passed. At this time, the amount of those costs cannot be defined. To date, four staff members have spent significant time writing this rule. More time will be required to develop the administrative process and training. The rule costs will be reported to the Legislature in the 2008 session.

❖ LOCAL GOVERNMENTS: The Division has discussed the rule with the 12 local Health Departments and the City/County Business Licensing offices in Utah. There will be an impact to them, but it remains unidentified.

❖ OTHER PERSONS: The net impact on others should be in the area of savings, rather than costs. This allows businesses to operate that, heretofore, have not been allowed. The amount is undefined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs will include a registration fee of \$20 annually. In the case where an applicant submits an application for a complicated food, there may be testing costs to bear. These are indicated in the attached laboratory and process authority information sheets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The agency has described the impacts that businesses may experience as a result of the implementation of this rule. Associated costs incurred by other entities are not known at this time and are difficult to anticipate or estimate prior to implementation. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Richard W Clark, or Doug Pearson at the above address, by phone at 801-538-7103, 801-538-7150, or 801-538-7144, by FAX at 801-538-7126, 801-538-7126, or 801-538-7169, or by Internet E-mail at kmathews@utah.gov, RICHARDWCLARK@utah.gov, or dpearson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 7/19/2007 at 1:00 PM, UDAF, Main Conference Room, 350 N Redwood Rd, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-560. Inspection and Regulation of Cottage Food Production Operations.

R70-560-1. Authority and Purpose.

(1) Authority. Promulgated under authority of Title 4, Chapter 5, Section 9.5, Utah Code Annotated.

(2) Purpose. The Department shall adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.

(3) Adopted and Referenced. The Utah Department of Agriculture and Food hereby adopts and references the applicable provisions of the Food Protection Rule, Utah Administrative Code Rule R70-530 issued by The Utah Department of Agriculture and Food, with specific exemptions as provided by Section 4-5-9.5, Utah Code Annotated.

R70-560-2. Definitions.

The following definitions apply in the interpretation and application of this rule:

(1) "Department" means the Utah Department of Agriculture and Food.

(2) "Food Processing Plant" does not include a Cottage Food Production Operation.

(3) "Section 26A-1-114" means Title 26A, Chapter 1, Section 114, Utah Code Annotated.

(4) "Section 26-15a-102" means Title 26, Chapter 15a, Section 102, Utah Code Annotated.

R70-560-3. Approval of Food.

(1) Prior to producing a food, the operator of a cottage food production operation shall:

(a) At the discretion of the Department, provide written confirmation from a Department approved food laboratory or process authority that the food is not potentially hazardous; and

(b) Receive approval from the Department to produce the food.

(2) A cottage food production operation may only sell Department approved foods to the public.

(3) When food includes fruits or vegetables grown by the operator of a cottage food production operation, the operator must have a current private pesticide applicator certification issued by the Department under Title 4, Chapter 14, Utah Code Annotated.

R70-560-4. Production Requirements.

(1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit;

(b) Use finished and cleanable surfaces;

(c) Maintain acceptable sanitary standards and practices;

(d) Provide separate storage from domestic storage, including refrigerated storage;

(e) Provide written evidence of compliance with zoning, building and other regulatory codes;

(f) Provide for annual water testing if not connected to a public water system; and

(g) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.

(2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven;

(c) Have a separate kitchen; or

(d) Submit plans and specifications before construction or remodeling;

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food;

(b) Allowing pets in the kitchen;

(c) Allowing free-roaming pets in the residence;

(d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and

(e) Allowing entry of non-employees into the kitchen while producing food.

(4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

(1) The Department shall inspect a cottage food production operation:

(a) Prior to issuing a registration for the cottage food production operation; and

(b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.

(2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.

(3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:

(a) Applies for the registration;

(b) Passes the inspection required by Subsection R70-560-5(1);

(c) Pays the fee required by the department;

(d) Meets the requirements of this section;

(e) Provides written evidence of compliance with local zoning and business codes;

(f) Complies with all other, state, municipal, county codes, including plumbing codes, electrical codes and safety codes.

(4) The registration issued under Rule R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-6. Cottage Food Labeling.

(1) A cottage food production operation shall:

(a) Properly label all foods in accordance with state and federal law, including 21 CFR 1 - 199;

(2) Label information shall include:

(a) The name specified by regulation or, in the absence thereof, the name commonly used for that food or an adequately descriptive name;

(b) A list of ingredients in descending order of predominance by weight, when the food is made from two or more ingredients;

(c) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;

(d) An accurate declaration of the net quantity of contents;

(e) The name and place of business of the cottage food production operation;

(f) The telephone number of the cottage food production operation;

(g) Nutritional labeling unless the product qualifies for an exemption; and

(h) The words "Home Produced" in bold and conspicuous 12 point type on the principal display panel.

R70-560-7. Food Distribution and Storage.

(1) Food shall be obtained from sources that comply with the law.

(2) An ingredient used in a cottage food production operation, that is from a hermetically-sealed container, must have been produced at a food processing plant that is regulated by the appropriate food regulatory agency with jurisdiction over the plant.

(3) A food offered for sale shall be safe, unadulterated, and honestly presented.

(a) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(b) Food or color additives, colored over-wraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.

(c) Food may not contain unapproved food additives, additives in unsafe amounts, or additives that exceed the amount necessary to achieve the needed effect.

(d) Food shall be protected from contamination, including contamination from chemical and pesticide hazards.

(4) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(5) Food that is unsafe, adulterated, or not honestly presented shall be discarded.

(6) Except for unprocessed raw agricultural products, foods shall not be displayed or stored on the ground.

(7) Ingredients used in a cottage food shall be in good condition, unspoiled and otherwise unadulterated. Ingredients cannot be used past the expiration date on the container if produced at a regulated food processing facility. Other ingredients may not be used if over 9 months old.

R70-560-8. Regulatory Jurisdiction.

(1) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

(3) Interstate sales of cottage food production operation produced foods are prohibited.

R70-560-9. Enforcement and Penalties.

A violation of any portion of this rule may result in civil or criminal action pursuant to Sections 4-2-12, 14 and 15, Utah Code Annotated.

KEY: food, cottage food, food establishment registration
Date of Enactment or Last Substantive Amendment: 2007
Authorizing, and Implemented or Interpreted Law: 4-5-9.5



Corrections, Administration
R251-401-3
 Policy

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30039

FILED: 06/07/2007, 07:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is due for the five-year review and this amendment will bring it into closer compliance with Section 64-13-21, and the current working policies of the Department of Corrections.

SUMMARY OF THE RULE OR CHANGE: Section 64-13-21 states supervision fees may be waived if the offender owes restitution to a victim. This rule did not previously contain this condition, and adding it will correct this oversight.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-21

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There should be no change in cost or savings to the state budget. The Department of Corrections is in compliance with the wording in Section 64-13-21, and the Department's policies and procedures which are based on this section, which allow a hardship reduction in fees for restitution. This correction brings the rule wording into compliance with both the law and current practices, and should not affect the budget.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the rule only applies to offenders under the jurisdiction of the State Department of Corrections.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons because the rule only applies to offenders under the jurisdiction of the State Department of Corrections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any change in compliance costs for offenders, since the law and policies of the Department under which fees are being managed are not being changed, only the rule wording.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses by this rule amendment. Thomas E. Patterson, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER UT 84020-9549, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Thomas E. Patterson, Executive Director

R251. Corrections, Administration.

R251-401. Supervision Fees.

R251-401-3. Policy.

It is the policy of the Department that:

(1) in accordance with Section 64-13-21, offenders on probation or parole shall be assessed a monthly supervision fee of \$30.00 if the offense was committed after May 3, 1993;

(2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor or if the offender owes restitution to a victim;

(3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;

(4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;

(4) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;

(5) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and

(6) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

KEY: fees, supervision, offenders

Date of Enactment or Last Substantive Amendment: [1994]2007

Notice of Continuation: September 11, 2002
Authorizing, and Implemented or Interpreted Law: 64-13-21

◆ ————— ◆

Education, Administration
R277-110
Legislative Supplemental Salary
Adjustment

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 30086
 FILED: 06/14/2007, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to outline a consistent method for distribution of monies appropriated by the 2007 Legislature in H.B. 382 for educator salary adjustments. (DAR NOTE: H.B. 382 (2007) is found at Chapter 380, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The new rule provides procedures for distribution of monies, provides eligibility criteria, and provides for accountability of distribution from school districts/charter schools.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 53A-17a-153(6) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget. Funding was provided by the 2007 Legislature for educator salary adjustments for eligible educators.
- ❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Full funding was provided by the 2007 Legislature for eligible educators to receive salary adjustments.
- ❖ **OTHER PERSONS:** There may be savings to school districts/charter schools because the funds for salary adjustments may take the place of increases typically provided by school districts/charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The monies will be distributed by the Utah State Office of Education consistent with this rule and eligible educators will receive the designated increase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.
R277-110. Legislative Supplemental Salary Adjustment.
R277-110-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "District or charter school" means a public school funded by the Utah State Legislature through the Minimum School Program.
- C. "Educator" means a teacher or other individuals as defined by the Utah State Legislature in 53A-17a-153 (1) Educator Salary Adjustments.
- D. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1).
- E. "USOE" means the Utah State Office of Education.
- F. "USDB" means Utah Schools for the Deaf and the Blind.

R277-110-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.
- B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments, enacted by the 2007 Legislature.

R277-110-3. Procedures.

- A. Each school district, charter school and USDB shall:
 - (1) put the Educator Salary Adjustment appropriation into the school district's, charter school's or USDB's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;

(2) ensure the amount of the Educator Salary Adjustment is the same for each full-time-equivalent educator position in the school district, charter school, or the USDB;

(3) ensure that each person who is not a full-time educator receives a proportional salary adjustment based on the number of hours the person works in his current assignment as an educator;

(4) ensure that each educator who receives a salary adjustment for school year 2007-08 has received a satisfactory or above job performance rating in his most recent evaluation; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.

B. The educator shall be:

(1) a classroom teacher;

(2) speech pathologist;

(3) librarian or media specialist;

(4) preschool teacher;

(5) school building level administrator;

(6) mentor teacher;

(7) teacher specialist;

(8) teacher leader;

(9) guidance counselor;

(10) audiologist;

(11) psychologist; or

(12) social worker as defined in 53A-17a-153 (1).

C. The educator shall be licensed, employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

D. Each school district, charter school, and the USDB shall annually note on the appropriate salary schedule:

(1) the amount of the Educator Salary Adjustment;

(2) the positions qualifying for the adjustment;

(3) that a satisfactory or better performance rating is required to receive the adjustment; and

E. For the 2007 school year, school districts, charter schools and the USDB shall note satisfactory performance ratings.

F. The USOE shall remit to school districts, charter schools and USDB, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

G. Adjustments to CACTUS after November 1 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

H. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. School districts, charter schools and USDB shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by September 15th on USOE-designated forms.

(1) School districts, charter schools and USDB, shall

(a) Maintain the information by program and;

(b) Carry over any unused balances within the program for use in the following year.

(2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).

(3) Failure to submit the required reports on a timely basis may result in withholding of school district, charter school or USDB funds until the report is submitted in an acceptable format and is complete, or may render the school district, charter school or USDB, ineligible for participation in the Educator Salary Adjustment program the following year.

(4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of school district, charter school or USDB funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

KEY: educators, salary adjustments

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-153(6)

Education, Administration **R277-413** Accreditation of Secondary Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30087

FILED: 06/14/2007, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to outline newly revised Northwest Association of Accredited Schools and Utah State Board of Education accreditation standards.

SUMMARY OF THE RULE OR CHANGE: The changes delete previous Northwest Association of Accredited Schools and Utah State Board of Education accreditation standards and provide newly revised Northwest Association of Accredited Schools and Utah State Board of Education accreditation standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-402(1)(c) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Revised accreditation standards merely reflect current national, regional, and state curriculum and terminology revisions.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Revised accreditation standards merely reflect current national, regional, and state curriculum and terminology revisions.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. Revised accreditation standards merely reflect current national, regional, and state curriculum and terminology revisions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Revised accreditation standards merely reflect current national, regional and state curriculum and terminology revisions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-413. Accreditation of Secondary Schools.

R277-413-4. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and Northwest share responsibilities. A school's self-evaluation, development, and implementation of a school improvement plan are the crucial primary steps toward accreditation.

B. A school seeking Northwest accreditation for the first time shall submit a membership application to Northwest. The accepted application shall be forwarded to the USOE.

(1) Upon a visit by USOE staff verifying a school's compliance with accreditation standards, the school shall then receive ~~[initial]provisional accreditation[and become a Candidate member].~~

(2) Within three years of ~~[initial]receiving provisional~~ accreditation, a candidate school shall complete a self-evaluation utilizing materials and protocols recommended and/or provided by the USOE.

(3) ~~[Candidate]Provisional~~ schools shall be visited annually until they have completed their first self-evaluation and full-team visit.

C. Northwest accredited schools shall be subject to:

- (1) compliance with Northwest membership requirements;
- (2) receipt and review of annual reports by the State Committee;

(3) satisfactory review by the State Committee, Northwest, and final Board approval;

(4) a new self-evaluation and site visit at least every six years by a visiting team assigned by the USOE to review the self-evaluation materials, visit classes, and talk with staff and students as follows:

(a) The visiting team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, USOE staff, and the Board.

(b) USOE staff shall review the visiting team report, consult with the State Committee and Northwest and recommend appropriate accreditation status to the Board.

D. Following review and acceptance, accreditation visiting team reports are public information and are available online.

E. The Board is the final accrediting authority.

R277-413-5. Board Accreditation Standards.

A. Board accreditation standards include Northwest standards and Utah-specific requirements. Each standard requires the school to ~~[answer]respond to~~ a series of ~~[questions]indicator statements~~ and provide ~~[information]evidence of compliance~~ as directed.

B. Northwest Core Standards for Accreditation.

(1) Teaching and Learning Standards

(a) Mission, Beliefs and Desired Results for Student Learning.

(b) Curriculum

(c) Instruction

(d) Assessment

(2) Support Standards

(a) Leadership and Organization

(b) School Services

(i) Student Support Service

(ii) Guidance Services

(iii) Health Services

(iv) Library Information Services

(v) Special Education Services

(vi) Family and Community Services

(c) Facilities and Finance

(3) School Improvement Standard

(a) Culture of Continual Improvement

C. Utah-specific indicators have been added to the Northwest standard indicators which include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific indicators are available from the USOE Curriculum Section. [

~~— B. Standard I—The Education Program~~

~~— (1) Northwest requirements as provided in the Annual Report:~~

~~— (a) Philosophy and objectives;~~

~~— (b) Administrative policies and practices;~~

~~— (c) Program of studies;~~

~~— (d) Technology in the curriculum;~~

~~— (2) Utah specific requirements which shall be satisfied and may be addressed under the Northwest standards:~~

~~— (a) State graduation and credit requirements (consistent with requirements of R277-700, The Elementary and Secondary School Core Curriculum);~~

~~— (i) Core curriculum;~~

~~— (ii) Assessments;~~

~~— (iii) Standardized testing, under Sections 53A-1-601 through 53A-1-611.~~

~~— (b) Length of school day and school year (consistent with requirements of R277-419, Pupil Accounting);~~

— (c) Title IX, (which is incorporated by reference) compliance;

— (d) Special education (consistent with requirements of R277-750, Education Programs for Students with Disabilities);

— C. Standard II— Student Personnel Services

— (1) Northwest requirements as provided in the Annual Report:

— (a) Special services including school services and community services;

— (b) Program of comprehensive services (available for students including counselors, social workers, school nurses, psychologists, and psychiatrists);

— (c) Personnel and organization (ratios and services);

— (d) Postsecondary services;

— (e) Student conduct and attendance;

— (2) Utah specific requirements which shall be satisfied and may be addressed under the Northwest standards:

— (a) Comprehensive guidance (consistent with requirements of R277-462, Comprehensive Guidance Program);

— (b) Student Educational Occupational Plan (SEOP) (consistent with requirements of R277-462, Comprehensive Guidance Program and R277-911, Secondary Applied Technology Education);

— (c) School fees (consistent with requirements of R277-407, School Fees);

— (d) Student conduct and attendance (consistent with Section 53A-11-901).

— D. Standard III— School Plant and Equipment

— (1) Northwest requirements as provided in the Annual Report:

— (a) Adequacy;

— (b) Function;

— (c) Assurances;

— (2) Utah specific requirements which shall be satisfied and may be addressed under the Northwest standards:

— (a) School emergency response plans (consistent with requirements of R277-400, School Emergency Response Plans);

— (b) Design, construction, operations, sanitation, and safety of schools (consistent with requirements of R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools);

— E. Standard IV— Library Media Program— Northwest requirements as provided in the Annual Report:

— (1) Student performance objectives;

— (2) Use of center;

— (3) Staffing;

— (4) Facilities;

— (5) Equipment;

— (6) Collection and alternative resources such as bookmobiles, or electronic resources;

— F. Standard V— Records

— (1) Northwest requirements as provided in the Annual Report:

— (a) Safekeeping;

— (b) Minimum information;

— (c) Handling of student records; and

— (2) Utah specific requirements which shall be satisfied and may be addressed under the Northwest standards:

— (a) Student records (consistent with requirements of the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

— G. Standard VI— School Improvement (Northwest and Utah requirements): A school shall submit pertinent information about its community support, school profile, school mission statement, school goals, and implementation of those goals.

— H. Standard VII— Preparation of Personnel

— (1) Northwest requirements as provided in the Annual Report:

— (a) Preparation of professional personnel;

— (b) Paraprofessional or non-professional personnel;

— (c) Alternatives to the standard teacher preparation;

— (d) Professional preparation deficiency report;

— (e) Professional development

— (f) Excessive turnover and efficiency of instruction;

— (g) Incentive programs for teachers and students; and

— (2) Utah specific requirements which shall be satisfied and may be addressed under the Northwest standards:

— (a) Professional development as required by the Board; and

— (b) Professional and ethical conduct of staff.

— I. Standard VIII— Administration— Northwest requirements as provided in the Annual Report:

— (1) Responsibility and leadership; and

— (2) Administrative staff size.

— J. Standard IX— Teacher Load— Northwest requirements as provided in the Annual Report:

— (1) Maximum teacher load; and

— (2) Personnel schedule.

— K. Standard X— Student Activities— Northwest requirements as provided in the Annual Report:

— (1) Student activities; and

— (2) Audit for student activity funds and bond requirements for persons managing student funds.

— L. Standard XI— Business Practices— Northwest requirements as provided in the Annual Report:

— (1) Financial responsibility, including solvency and student fees proportionate to expenditures;

— (2) Student tuition and fees policies; and

— (3) Advertising about the school and school program that is only truthful and positive.]

KEY: accreditation**Date of Enactment or Last Substantive Amendment: [April 1, 2005]2007****Notice of Continuation: February 26, 2004****Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1); 53A-1-401(3)**

Education, Administration
R277-459
 Classroom Supplies Appropriation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30088

FILED: 06/14/2007, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide criteria for distribution of \$2,500,000 in one-time funds appropriated by the 2007 Legislature in H.B. 160 for for classroom supplies and materials with priority for funds to first year classroom teachers. (DAR NOTE: H.B. 160 (2007) is found at Chapter 372, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The amendments provide new and revised definitions and a revised distribution formula for the one-time appropriation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(b) and H.B. 160 (2007)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. One-time funds have been appropriated by the 2007 Legislature to provide for this program.

❖ LOCAL GOVERNMENTS: There may be some savings to school districts. The additional one-time appropriation will give teachers a greater amount of money to spend on classroom supplies and materials so schools and school districts may not need to provide as much funding in that area.

❖ OTHER PERSONS: There may be savings for eligible teachers because of this additional appropriation. The largest savings will be to first year classroom teachers because they will receive the most money. Most classroom teachers use their own money to purchase supplies and materials for their classrooms; due to these funds, teachers save out-of-pocket expenses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funding was appropriated by the 2007 Legislature to provide for this program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-459. Classroom Supplies Appropriation.

R277-459-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Classroom teacher" ~~means~~ definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, and/or charter schools.

(2) ~~These~~ Eligible teachers are licensed personnel, and paid on ~~the teachers'~~ a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools. ~~Specific categories of staff to be included may be changed, therefore, current definitions may be found in the most recent legislation.~~

C. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "First year classroom teacher/intern" means any teacher who has no experience posted in the teacher's CACTUS file in the school/school district in which the teacher is currently assigned as of the November 1 2007 CACTUS update.

F. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

G. "Second year through fifth year classroom teacher" means any teacher who has one to four years of experience in the teacher's CACTUS file as of the November 1, 2007 CACTUS file.

~~E~~H. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

- (1) paper, pencils, workbooks, notebooks, supplementary books and resources;
- (2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;
- (3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

[F]L. "USOE" means the Utah State Office of Education.

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, ~~and~~ or charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers and intern teachers as defined ~~above~~ in this rule for each school district, the Utah Schools for the Deaf and the Blind, ~~and~~ or charter schools as of November 1 of each year.

B. The USOE shall distribute ~~funds~~ a base allocation through each school district, the Utah Schools for the Deaf and the Blind, and to charter schools proportionally per eligible position to the extent of the appropriation.

(1) In addition to the total base allocation to all teachers as directed in H.B. 160, 2007 Legislative Session, an additional amount shall be distributed to teachers in any grade in the first year of teaching, or as an intern, in each school district, the Utah Schools for the Deaf and the Blind, or charter schools proportionally per eligible position, to the extent of the appropriation.

(2) If the teacher allocation in R277-459-3B(1) exceeds \$500 per first year classroom teacher/intern as defined under R277-459-1E, the rest of the funding shall be distributed to teachers in any grade in the second through the fifth year of teaching using the following schedule:

(a) second year teacher shall receive 80 percent of first year teacher amount;

(b) third year teacher shall receive 60 percent of first year teacher amount;

(c) fourth year teacher shall receive 40 percent of first year teacher amount;

(d) fifth year teacher shall receive 20 percent of first year teacher amount.

C. Individual teachers shall designate the uses for their allocations ~~with~~ consistent with the criteria of this rule. ~~School~~ ~~D~~ districts/charter schools and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district/charter school shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following years.

F. These funds ~~are to~~ shall supplement, not supplant, existing funds for ~~these~~ identified purposes.

G. These funds ~~are to~~ shall be accounted for by the school district/charter school or eligible school using state ~~or~~ and school district procurement and accounting policies.

H. The ~~se~~ se funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, ~~and~~ or charter schools. Employees ~~may not claim personal ownership of~~ do not personally own materials purchased with ~~these~~ designated public funds.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, ~~and~~ or charter schools shall allow, but not require, teachers to jointly use their allocations.

~~B. Districts, the Utah Schools for the Deaf and the Blind, and charter schools shall allow part-time or job-sharing teachers a proportionate allocation.~~ B. School districts, the Utah Schools for the Deaf and the Blind, and charter schools may carry over these funds, if necessary.

KEY: teachers, supplies

Date of Enactment or Last Substantive Amendment: ~~May 9,~~ **2007**

Notice of Continuation: **July 6, 2005**

Authorizing, and Implemented or Interpreted Law: **Art X Sec 3; 53A-1-402(1)(b)**



Education, Administration

R277-462

Comprehensive Guidance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30089

FILED: 06/14/2007, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for a funding process consistent with Subsection 53A-17a-113(5) for Comprehensive Guidance programs.

SUMMARY OF THE RULE OR CHANGE: The amended rule provides terminology changes and provides criteria for awarding grants to school districts and charter schools.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1a-106(2)(b) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Specific funding has been provided for grant recipients.

❖ LOCAL GOVERNMENTS: There may be some costs to schools/school districts because all grant recipients must provide an equal amount of matching funds to receive a grant.

Costs to recipients are too speculative to calculate at this time.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. Grant recipients are public schools/school districts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some compliance costs to schools/school districts because all grant recipients must provide an equal amount of matching funds to receive a grant. Costs to potential recipients are too speculative to calculate at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-462. Comprehensive Counseling and Guidance Program.

R277-462-1. Definitions.

A. "ATE Consortium" means representatives of nine ATE Regional Planning Areas.

B. "Board" means the Utah State Board of Education and Applied Technology Education.

C. "Comprehensive Counseling and Guidance Program" means the organization of resources to meet the priority needs of students through four delivery system components:

(1) guidance curriculum which means providing guidance content to all students in a systematic way;

(2) student educational and occupational planning component which means individualized education and career planning with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

D. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives of district counseling

supervisors, district ATE directors, PTA, the school counselor professional association, and practicing school counselors.

E. "Direct services" means time spent on the guidance curriculum, individual student planning, including SEOP, and responsive services activities meeting students' identified needs as discerned by students, school personnel and parents consistent with district policy.

F. "SEOP" means student education occupation plans and processes.

G. "Student achievement" means academic performance, career development, personal/social development, retention, attendance, SEOP outcomes and other measures of adequate yearly progress.

H. "USOE" means the Utah State Office of Education.

I. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1a-106(2)(b) which directs local boards to develop policies for the implementation of student education plans (SEP) or SEOPs, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, schools shall implement SEOP policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policy, and the school improvement plan developed for Northwest Accreditation.

(2) Each school, including charter schools, which has a USOE-approved Comprehensive Counseling and Guidance Program shall receive a base of 6 WPU for the first 400 students as determined by the October 1 enrollment of the previous fiscal year, and a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students.

(3) Priority for funding shall be given for grades nine through twelve for ATE programs including the Comprehensive Counseling and Guidance Program and any remaining funds shall be allocated to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The charter school or school district Comprehensive Counseling and Guidance Program shall be integrated into the mission of the school and be consistent with the Northwest Accreditation process as defined in R277-413, Accreditation of Secondary Schools, Alternative or Special Purpose Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student

achievement included in the local school improvement plan developed as part of the Northwest Accreditation process.

(5) Schools shall qualify to receive Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site review by team members designated by the district or charter school. Scheduling of the on-site review process shall be coordinated with the Northwest Accreditation process for secondary schools as defined in R277-413 and shall, at a minimum, take place every three years. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities in individual student planning, guidance curriculum, responsive services and system support.

(6) Consistent with Section 53A-17a-113(5) of the monies allocated to Comprehensive Counseling and Guidance Programs, \$1,000,000 in grants shall be awarded to school districts and charter schools that:

- (a) provide an equal amount of matching funds; and
- (b) do not supplant other funds used for Comprehensive Counseling and Guidance Programs; and
- (c) show effort to make the counselor to student ratio for Comprehensive Counseling and Guidance Programs no greater than one counselor for every 350 students.

(7) Districts and charter schools shall include in their annual Request for Proposal to the USOE for Comprehensive Counseling and Guidance Program funds a description of sources for the matching funds and a confirmation that such monies shall be used to reduce counselor to student ratios or maximize direct services to students by school counselors.

~~(6)~~ Comprehensive Counseling and Guidance Program funds shall be distributed to districts for schools within the district or charter schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

- (a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;
- (b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;
- (c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;
- (d) Evidence that eighty percent of aggregate counselors time is devoted to DIRECT service to students through a balanced program of individual planning, guidance curriculum, and responsive services consistent with the results of the school needs data;
- (e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;
- (f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;
- (g) Structures and processes to ensure effective Program management including advisory and steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;
- (h) Responsive services are available to address the immediate concerns and identified needs of all students through an education-oriented and programmatic approach, and in collaboration with

existing school programs and coordination with family, school and community resources;

(i) Delivery to students of a developmental and sequential guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. Guidance curriculum is prioritized according to the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Establishment of Student Education Occupation Planning (SEOP), both as a process and a product consistent with local board or charter school governing board policy and goals of the Utah Model for Comprehensive Counseling and Guidance Program, Northwest Accreditation, R277-413, and Applied Technology Education, R277-911; and

(l) All Program elements are designed to recognize and address the diverse needs of every student.

B. All districts may qualify schools for the Comprehensive Counseling and Guidance Program funds and districts and charter school governing boards shall certify in writing that all Program standards are being met by each school receiving funds under this rule and meet the following deadlines: [

~~(1)~~ The "Form for Program Approval" shall be received by the USOE from schools scheduled for review in the three year cycle no later than May 1 of each year for disbursement of funds the next year. [

~~(2) Programs approved and forms submitted by December 20 of each year MAY be considered for partial disbursement, if funds are available.]~~

R277-462-4. Use of Funds.

A. Funds disbursed for this Program shall be used by the district in the district secondary schools in grades seven through twelve to provide a guidance curriculum and an SEOP for each student at the school, to provide responsive services, and to provide system support for the Comprehensive Counseling and Guidance Program. Such costs may include the following:

- (1) personnel costs;
- (2) career center equipment such as computers, or media equipment;
- (3) career center materials such as computer software, occupational information, SEOP folders, and educational information;
- (4) in-service training of personnel involved in the Comprehensive Counseling and Guidance Program;
- (5) extended day or year if REQUIRED to run the Program; and
- (6) guidance curriculum materials for use in classrooms.

B. Funds shall not be used for non-guidance purposes or to supplant funds already being provided for the Comprehensive Counseling and Guidance Program except that:

- (1) Districts or charter schools may pay for the costs incurred in hiring NEW personnel as a means of reducing the pupil/counselor ratio and eliminating time spent on non-guidance activities in order to meet the Program criteria.
- (2) Districts or charter schools may pay other costs associated with a Comprehensive Counseling and Guidance Program which were incurred as a part of the Program during the implementation phase but which WERE NOT a regular part of the Program prior to that time.

R277-462-5. Variances and Reporting.

A. New schools that are created from schools that have Northwest accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. Charter schools and other new schools not meeting the requirements of R277-462-5A may receive [e]Comprehensive Counseling and [g]Guidance [p]Program funding following two years of planning, training and program implementation.

C. The USOE shall monitor the Program and provide an annual report on its progress and success.

D. Districts or charter schools shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program as ~~required or~~ requested.

KEY: public education, counselors

Date of Enactment or Last Substantive Amendment: [~~February 5, 2004~~]2007

Notice of Continuation: September 7, 2004

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-201; 53A-17a-131.8



Education, Administration
R277-467
 Distribution of Funds Appropriated for
 Library Books and Electronic
 Resources

NOTICE OF PROPOSED RULE
 (New Rule)

DAR FILE NO.: 30090
 FILED: 06/14/2007, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide criteria for distribution of an ongoing appropriation, subject to budget constraints, to school districts, and charter schools for library books and electronic resources.

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions, criteria for distribution of funds, and criteria for accountability and evaluation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Specific funding has been provided for this program.

❖ **LOCAL GOVERNMENTS:** There may be some savings to schools because they will receive some funding for library

books and electronic resources. Savings to recipient schools are too speculative to determine at this time.

❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons. Schools will be the recipients of the funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Specific funding has been provided for this program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact to businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-467. Distribution of Funds Appropriated for Library Books and Electronic Resources.

R277-467-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Electronic resources" means databases, CDs, DVDs, software or other items in electronic format which may be included in the school library media collection and made available for use or access in the school library media center.

C. "Library books" means trade books that support the school curriculum and books for recreational reading interests. This definition does not include textbooks or books used solely for classroom instruction or classroom libraries.

D. "USOE" means the Utah State Office of Education.

R277-467-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to distribute an on-going appropriation, subject to budget constraints, to school districts and

charter schools. The appropriation is designated for school library books and electronic resources.

R277-467-3. Distribution of Funds.

A. Each Utah public and charter school shall receive an allocation from the annual appropriation as follows:

(1) 25 percent shall be divided equally among all public schools; and

(2) 75 percent shall be divided among public schools based on each school's average daily membership as compared to the total average daily membership of all public schools.

B. A school district or charter school may not use money appropriated in this allocation to supplant other monies used to purchase library books or electronic resources.

C. Schools shall spend these fund allocations only for library books and electronic resources that shall be part of the school library media collection and available for general use and checkout by students and staff or both.

R277-467-4. Accountability and Evaluation.

The USOE may review schools' use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.

KEY: libraries, educational media

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)



Education, Administration

R277-469

Instructional Materials Commission Operating Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30091

FILED: 06/14/2007, 15:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2007 Legislature passed H.B. 364 which prohibits a school district from purchasing certain instructional materials unless the materials have been evaluated by an independent party for alignment with the core curriculum, requires that the alignment evaluation be made available on a website at no charge, and exempts charter schools from the evaluation requirements. The amendments to this rule align the rule with state law. (DAR NOTE: H.B. 364 (2007) is found at Chapter 349, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule provide for new and revised definitions, revised criteria for use of state funds for instructional materials, revised criteria for recommendation of instructional materials following mid-party evaluation of core curriculum, revised criteria for agreements, and procedures for school districts, and revised

criteria for agreements and procedures for publishing companies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Sections 53A-14-1-2 through 53A-14-106

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. All "mapping" will be completed by textbook publishers, not state government.

❖ LOCAL GOVERNMENTS: There are no immediate anticipated cost or savings to public schools/school districts. It is anticipated that textbook publishers will not raise textbook prices to pay for this requirement this year, but there could be increases in future years. Any increases in future years are too speculative to estimate at this time.

❖ OTHER PERSONS: Generally, there are no anticipated cost or savings to other persons. "Mapping" will be completed by publishers before materials are sold to schools. Occasionally, students/parents buy textbooks, per school policies. Costs for textbooks should not increase due to this service by publishers this year but may increase in future years. Any increases in future years are too speculative to estimate at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some compliance costs for affected persons. Textbook providers may see increased costs due to evaluation expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see that there may be fiscal impact to textbook publishers due to evaluation expenses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-469. Instructional Materials Commission Operating Procedures.****R277-469-1. Definitions.**

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

~~[B.] "ASCH" means American Standard Code for Information Interchange from which Braille versions of all or part of the instructional materials can be produced.~~

~~—[C.]~~ [B.] "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

[D.] [C.] "Board" means the Utah State Board of Education.

[E.] [D.] "Commission" means the Instructional Materials Commission.

[F.] [E.] "Instructional materials" means systematically arranged text materials, in harmony with the Core framework and required courses of study or U-PASS requirements or both, which may be used by students or teachers or both as principal sources of study and which cover any portion of the course. These materials:

- (1) shall be designed for student use; and
- (2) may be accompanied by or contain teaching guides and study helps; and
- (3) shall be high quality, research-based and proven to be effective in supporting student learning.

F. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal. The USOE shall develop a list of approved independent parties to be recommended to the Board.

G. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

H. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

I. National Instructional Materials Accessibility Standard (NIMAS) is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

[H.] [J.] "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

K. "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which

a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

L. "Primary instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

M. "Public website" means a website provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment mapping to the Core for Utah primary instructional materials.

N. "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

[J.] [Q.] "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

[K.] [P.] "USOE" means the Utah State Office of Education.

[L.] [Q.] "Utah Performance Assessment System for Students (U-PASS)" means:

- (1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;
- (2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, as defined in Section 53A-1-602;
- (3) a direct writing assessment in grades 6 and 9; and
- (4) a tenth grade basic skills competency test as detailed in Section 53A-1-611.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

R277-469-3. Use of State Funds for Instructional Materials.

A. School [D]istricts may use funds:

- ~~—(1) for any instructional materials that support Core or U-PASS requirements;~~
- ~~—(2) for advanced placement, International Baccalaureate, concurrent enrollment, and college level course materials. Use of these materials may require parental permission consistent with R277-474.]~~ (1) for primary instructional materials that have been mapped and aligned to the Core by an independent party; and

(2) for any supplemental or supportive instructional materials that support Core or U-PASS requirements.

(3) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

~~[(1) may be used as student instructional materials only consistent with the law and this rule; and]~~ (1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

~~[(2)]~~ shall be reviewed and recommended by the Commission or ~~[the school district prior to use]~~ by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in ~~[Subs]~~Section 53A-14-10~~[2(4)]~~1.

B. Members shall serve four year staggered terms with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. The primary focus of instructional materials review shall be materials used in subjects assessed under U-PASS to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

B. Subject areas and timelines for review shall be determined by the Commission based on school district needs and requests, and using forms and procedures provided by the USOE.

~~[B]~~C. Commission review of material takes place at least annually.

R277-469-6. Review and Adoption Categories.

~~[A.—]~~Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:

~~[(4)]~~A. Recommended Primary: Instructional materials that:

~~[(a)]~~1 are in alignment with content, philosophy and instructional strategies of the Core;

(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107;

~~[(b)]~~3 are appropriate for use by students as principal sources of study;

~~[(c)]~~4 provide comprehensive coverage of course content; and

~~[(d)]~~5 support Core or U-PASS requirements or both.

~~[(2)]~~B. Recommended Limited: Instructional materials that are in limited alignment with the Core or U-PASS requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

~~[(3)]~~C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.

~~[(4)]~~D. Recommended Student Resource: Instructional materials aligned to the Core or that support U-PASS that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

~~[(5)]~~E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.

~~[(6)]~~F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.

R277-469-7. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

A. Instructional materials shall:

(1) be consistent with Core or U-PASS requirements or both~~[-];~~

(2) if used as primary materials, be mapped and aligned to the Core consistent with Section 53A-14-107;

~~[(2)]~~3 be high quality, research-based and proven to be effective in supporting student learning~~[-];~~

~~[(3)]~~4 provide an objective and balanced viewpoint on issues~~[-];~~

~~[(4)]~~5 include enrichment and extension possibilities~~[-];~~

~~[(5)]~~6 be appropriate to varying levels of learning~~[-];~~

~~[(6)]~~7 be accurate and factual~~[-];~~

~~[(7)]~~8 be arranged chronologically or systematically, or both~~[-];~~

~~[(8)]~~9 reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups~~[-];~~

~~[(9)]~~10 be free from sexual, ethnic, age, gender or disability bias and stereotyping~~[-]; and~~

~~[(10)]~~11 be of acceptable technical quality.

B. ~~[Upon request by the district, a publisher of instructional materials shall furnish computer diskettes of materials for literary subjects in the American Standard Code for Information Interchange (ASCII).]~~ Publishers, when submitting new primary material to be evaluated by the USOE, shall submit an electronic version in NIMAS file format of that material to the National Instructional Materials Access Center (NIMAC) for use in conversion into Braille, large print, and other formats for students with print disabilities.

C. USOE review:

(1) The USOE may require a school district to provide a report of instructional materials purchased by the school district or a school in the previous five years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-8. Agreements and Procedures for School Districts and Publishing Companies.

[A.] A local board shall establish a policy for school district and school selection and purchase of instructional materials. The policy shall include:

~~[(1) procedures for schools to purchase instructional materials consistent with Section 53A-12-204(1);] A. assurances signed by the school district superintendent and school principal(s) that primary instructional materials have been aligned to the Core by an independent party and that the completed Core alignment mapping is available on a public website free of charge for teachers and the general public.~~

~~[(2)] B. assurances signed by the school district superintendent and school principal(s) that instructional materials not recommended by the Commission have been [purchased] selected consistent with state law. The assurances shall be available for review by the Board upon request.~~

~~C. Consistent with legislative direction, charter schools are exempt from using only instructional materials that have been reviewed consistent with this rule under Section 53A-1a-511(4)(g).~~

R277-469-9. Agreements and Procedures for Publishing Companies.

A. Publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party to evaluate and align the primary instructional material and related ancillary materials to the appropriate Utah Core for basic skills courses and in harmony with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment mapping on a public website at no charge; and

(b) the publisher provides a hyperlink from the public website to the Commission for the purpose of tying the independent alignment mapping to the evaluation conducted by the Commission on the RIMs website.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. Publishers ~~[desiring] seeking~~ to sell recommended materials to Utah schools or school districts ~~[schools] shall [or districts shall]~~ have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-~~[8] 9~~ shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. Recommended materials with revisions:

(1) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes~~[-]; and~~

~~(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access Center (NIMAC) if the USOE approves the substitution request.~~

(2) If Subsection R277-469-8E is not satisfied, a new edition shall be submitted for recommendation as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the state subject area specialist.

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

R277-469-~~9] 10. Request for Reconsideration of Recommendation.~~

A. A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows:

(1) A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(2) A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next review cycle.

(3) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(8) A school district, school or publisher shall receive written notification that a recommendation is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are recommended.

KEY: instructional materials

Date of Enactment or Last Substantive Amendment: ~~May 5, 2004] 2007~~

Notice of Continuation: April 4, 2003

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-14-101 through 53A-14-106; 53A-1-401(3)



Education, Administration
R277-470
Charter Schools

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 30092
 FILED: 06/14/2007, 15:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides for revisions based on amendments to state law by the 2007 Legislature in H.B. 164. (DAR NOTE: H.B. 164 (2007) is found at Chapter 344, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule include: 1) procedures for identifying the maximum number of authorized charter school students statewide; 2) procedures that provide for new or expanding charter school notification of prospective students and parents; 3) procedures for transfer students; 4) procedures for expansion and satellite schools for approved charter schools; 5) procedures for a charter school building subaccount; and 6) appeals criteria and procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1a-513 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The State Charter School staff at the Utah State Office of Education will administer the amended rule within existing budget constraints.
- ❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. Charter schools receive budgeted funds to fulfill any responsibilities of this rule.
- ❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The amendments are specific to charter schools and not individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments related to charter schools and not individuals and funding has been provided to charter schools for the purposes of the amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-470. Charter Schools.****R277-470-1. Definitions.**

A. "Board" means the Utah State Board of Education.
 B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

C. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

D. "Charter school deficiencies" means the following information:

(1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;

(2) a charter school is not providing required documentation following reasonable warning;

(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.

~~[G]~~E. "Charter school ~~[F]~~found~~ing~~ member" or "found~~ing~~ member" means an individual who ~~has~~ had a significant role in the initial development of the charter school ~~[application]~~up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.

F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.

~~[E]~~G. "Days" means calendar days, unless specifically designated.

~~[F]~~H. "Expansion" means a proposed increase of students or grade level(s) in an operating charter school at a single location.

~~[H]~~I. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing ~~[free]~~ public education.

J. "Neighborhood school" for purposes of this rule, means a public, non-charter school.

~~[F]~~K. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

~~[F]~~L. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.

M. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area.

~~[K]~~N. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

O. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-1a-104(5)(b).

P. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-104(6).

Q. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

~~[E]~~R. "USOE" means the Utah State Office of Education.

~~[M]~~S. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to adopt rules for charter school funding and fund distribution, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools and to ensure parent involvement on charter school boards.

R277-470-3. Maximum Authorized Charter School Students.

A. Total authorized students for both the 2007-08 and 2008-09 school years include all students who attend charter schools in the respective school years.

B. Local school boards may not approve locally-chartered schools for the 2007-08 or 2008-09 school years unless they notify the Board by April 15, 2007 of proposed locally-chartered schools and estimated numbers of students.

C. The Board, in consultation with the State Charter School Board, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5 minus the total projected number of students who will attend locally-chartered schools provided the State Charter School Board receives notification of proposed locally-chartered schools by April 15, 2007.

D. Locally-chartered schools submitting applications shall be considered with all new charters.

E. If the State Charter School Board does not receive written notification of proposed locally-chartered schools by April 15, 2007 and March 15 every year thereafter, the State Charter School Board may recommend approval of additional Board-chartered schools or expansions or satellites that include the entire total number of students allowed under 53A-1a-502.5.

R277-470-~~[3]~~4. Charter School Orientation and Training.

A. Beginning with the 2006-2007 school year, all charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be held regionally or be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information including:

- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;
- (3) charter school financial and data management requirements;
- (4) charter school legal requirements;
- (5) federal requirements for charter school funding; and
- (6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding after July 1, 2007 shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

- (1) a new or expanding charter school's purpose, focus and governance structure, including names and contact information of governing board members;
- (2) the number of new students that will be admitted into the school;
- (3) the proposed school calendar for the charter school;
- (4) the charter school's timelines for acceptance or rejection of new students;
- (5) a State-approved student charter school application (beginning with the 2008-09 school year);
- (6) procedures for transferring to or from a charter school, together with applicable timelines; and
- (7) provide for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.

B. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 150 days before the proposed opening day of school beginning with the 2008-09 school year; or

C. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place, and for schools opening after the 2007-08 school year at least 150 days before the proposed first day of school. The completed charter school website

shall be provided to the State Charter School Board at least 170 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

R277-470-6. Transfer Student Criteria.

A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (5), including timelines.

B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(4) and using USOE-designated transfer forms.

C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE-designated transfer forms.

D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.

E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.

F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.

R277-470-[4]7. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. A local or state-chartered school shall be approved by ~~September~~ November 30, ~~[of the school]~~ two years prior to the school year it intends to serve students in order to be eligible for state funds.

C. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

D. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

E. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-[5]8. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board ~~[of the charter school]~~, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board ~~[by the Board auditor, or by an independent auditor].~~

B. The State Charter School Board or the Board through the State Charter School Board may direct a ~~local~~ charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

(1) allow a ~~local~~ charter school governing board to hold a hearing to determine financial responsibility and assist the ~~local~~ charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds; or

(3) recommend cessation of federal funding to the school; ~~or~~

(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or

~~[(4)]~~ any combination of the foregoing (1), (2), ~~and~~ (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may ~~have~~ exercise flexibility ~~[exercised]~~ for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-[6]9. Charter School Financial Practices and Training.

~~A. [Charter school directors and business administrators and finance staff may attend all available USOE sponsored financial and statistical training sessions and meetings that are applicable to charter schools.] Charter school business and financial staff shall attend USOE required business meetings for charter schools.~~

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-1-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

~~F. Charter school business and financial staff shall attend USOE business meetings for charter schools.]~~

~~[G]~~E. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

~~[H]~~G. Charter schools shall comply with R277-471, Oversight of School Inspections.

R277-470-[7]10. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school, consistent with R277-470-4.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

- (1) current board members and founding members;
- (2) audit and financial records:
 - (a) record of state payments received;
 - (b) record of contributions received by the school from inception to date;
 - (c) test scores, including calendar of testing;
 - (d) current employees: identifying assignments and licensing status, if applicable;
 - (e) student lists, including home addresses or uniform student identifiers for current students;
 - (f) school calendar for previous school year and prospective school year;
 - (g) course offerings, if applicable;
 - (h) affidavits, signed by all board members providing or certifying (documentation may be required):
 - (i) the school's nondiscrimination toward students and employees;
 - (ii) the school's compliance with all state and federal laws;
 - (iii) that all information on application provided is complete and accurate;
 - (iv) that school meets/complies with all health and safety codes/laws;
 - (v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;
 - (vi) that the school is operating consistent with the school's charter;
 - (vii) the school's Annual Yearly Progress status under No Child Left Behind;
 - (viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;
 - (ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-[8]11. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-[8]11.

B. To obtain its allocation of NCLB formula funds, a charter school shall identify its economically disadvantaged students in the October upload of the Data Clearinghouse~~submit a completed Charter School Economically Disadvantaged Report to the USOE by November 15 of the fiscal year for which funding for NCLB funds are sought.~~

~~C. The Charter School Economically Disadvantaged Report shall:~~

~~(1) state the number of economically disadvantaged students enrolled in the school as of the last operating day of the immediately preceding October by the students' district of residence; and~~

~~(2) be signed by the charter school business administrator.~~

~~D. If the school operates a federal school lunch program, the total number of students on the Charter School Economically Disadvantaged Report shall match the total number of free and reduced priced lunch students reported by the same deadline to the USOE through the Free and Reduced Price Lunch Enrollment Survey].~~

~~E]C. If the school does not operate a federal school lunch program, the school:~~

~~(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or~~

~~(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.~~

~~F]D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.~~

R277-470-[9]12. Charter School Parental Involvement.

A. Charter schools shall encourage and maintain active involvement of parents of current charter school students.

B. Beginning with the 2007-2008 school year, all charter schools shall have at least one elected parent representative chosen by and from parents of students currently attending the charter school to serve on a rotating basis as a voting member on the charter school's governing board with additional parents of students currently attending the charter school totaling a minimum of twenty-five percent of the governing board.

C. A charter school's charter shall provide the election process and selection process for selecting the required parent representative(s) for the governing board and the rotating terms for elected and identified parents.

D. Charter schools that apply for School LAND Trust funds shall have a majority of parents elected from parents of students currently attending the charter school on the committee designated to make decisions about School LAND Trust funds consistent with R277-477-3[~~D~~]E.

R277-470-[10]13. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's charter schools, including:

(1) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;

(2) quarterly review of summary financial records and disbursements;

(3) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations; ~~and~~

(4) regular review of charter school operations to ensure the operations and practices are consistent with the currently approved charter language;

~~(4) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff; and~~

(6) audits and investigations of claims of fraud or misuse of public assets or funds.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

(1) financial deficiencies or irregularities; or

(2) persistently low student achievement inconsistent with comparable schools; or

(3) failure of the charter school to comply with state law, Board rules, or directives; ~~or~~

(4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters to include the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

R277-470-~~14~~14. Approved Charter School Expansion ~~for Approved Charter Schools~~.

A. The following shall apply to requests for expansion for approved and operating charter schools:

(1) The school satisfies all requirements of state law and Board rule.

(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1s-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation; ~~and~~

(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

~~(d) [students at the school are performing on standardized assessments at least consistent with comparable students at comparable schools.]~~ students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(e) adequate qualified administrators ~~[or] and staff~~ ~~or both~~ shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no fewer than nine

months prior to the date of the proposed implementation of the expansion.

C. Expansion requests for the 2008-09 school year shall be considered by the State Charter School Board as part of the total number of new charter school students allowed under 53A-1a-502.5(1).

R277-470-15. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(2) The school has operated successfully for at least three years;

(3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;

(6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;

(7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and

(8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;

(2) A detailed explanation of the governance structure for the satellite school, including appointed, elected and parent representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan. The applicant charter school shall include at least two voting parent members representing the parents of students at the satellite school on its governing board; at least one parent shall be elected by parents of students attending the satellite school;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-[12]16. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-1a-104(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-1a-104(6)(a) from interested parties, including individuals desiring to nominate themselves, before June 1. The Board shall determine an appropriate number of Subaccount Committee members based upon nominations.

(2) The governor shall nominate one or more individuals who meet the qualifications of 53A-1a-104(6)(a) before June 1.

(3) Subaccount Committee members shall serve three year terms, beginning in June 2007. If revolving loan account funds continue to be available, the Board shall appoint at least two

additional members in June 2008, to ensure continuity of the committee.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-1a-104(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment.

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-104(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

R277-470-~~13~~18. Appeals [~~Process to State Board of Education and Miscellaneous Provisions~~]Criteria and Procedures.

~~[A. Charter schools denied a charter by the State Charter School Board may appeal to the Board under Section 53A-1a-505(1)(e)(ii).~~

~~— B. Appeals shall be made within 20 days of the State Charter School Board's final administrative recommendation.~~

~~— C. Appeals shall only be made in writing and shall be considered by the Board or a committee of Board members designated by the Board within 45 days of receipt by the Board.~~

~~— D. Only final administrative charter decisions, including approval and proposals for expansion, may be appealed. State Charter School Board directives, requests for additional information, or preliminary decisions about charter school applications shall not be considered by the Board.~~

~~— E. The Board's decision shall be made in writing to the State Charter School Board and the appellant as soon as possible but no more than 5 days following consideration by the full Board.~~

~~— F. The Board's action is the final administrative action.~~

~~— G. The State Charter School Board and the Board may, in the recommendation and approval process, consider and give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.~~

~~— (1) Underserved student populations may include low income students, students with disabilities, students who need English Language Learners (ELL) services, or students in remote areas of the state who have limited access to the full range of academic courses;~~

~~— (2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within a 50 mile radius; and~~

~~— (3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.]A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.~~

~~B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:~~

~~(1) recommendation for termination of a charter;~~

~~(2) recommendation for denial of expansions or satellite schools;~~

~~(3) recommendation for denial of local charter board proposed changes to approved charters;~~

~~(4) recommendation for denial or withholding of funds from local charter boards; and~~

~~(5) recommendation for denial of a charter.~~

~~C. No other issues may be appealed.~~

~~D. Appeals procedures and timelines~~

~~(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:~~

~~(a) provide written notice of denial to the charter school or approved charter school;~~

~~(b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and~~

~~(c) post information about the appeals process on the State Charter School Board website and provide training to prospective~~

charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-19. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected

child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

KEY: education, charter schools

Date of Enactment or Last Substantive Amendment: [October 24, 2006]2007

Notice of Continuation: October 31, 2003

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-515; 53A-1a-505; 53A-1a-513; 53A-1a-502; 53A-1-401(3); 53A-1a-510; 53A-1a-509; 41-6-115



Education, Administration **R277-473** Testing Procedures

NOTICE OF PROPOSED RULE (Amendment)

DAR File No.: 30093

FILED: 06/14/2007, 15:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to include the required answer document submission deadlines for all assessments. It also provides for the Utah State Board of Education to be informed of school districts and charter schools not meeting the required deadlines.

SUMMARY OF THE RULE OR CHANGE: The amendments provide for revised and new definitions and for revised deadline dates for school districts and charter schools to administer and return materials to the Utah State Office of Education.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-603(3) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Any increased staff assignments or duties due to additional assessment requirements will be absorbed within current budgets.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. School districts and charter schools currently provide required answer sheet

documentation--the rule changes now provide deadlines for schools.

❖ OTHER PERSONS: There are no anticipated cost or savings to small businesses and persons other than businesses. The changes only pertain to school districts and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. School districts and charter schools already provide required answer sheet documentation--the rule changes now provide revised deadlines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration. R277-473. Testing Procedures. R277-473-1. Definitions.

A. "Basic skills course" means those courses specified in Utah law for which CRT testing is required.

B. "Board" means the Utah State Board of Education.

C. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

~~[D. "DCS" means the USOE District Computer Services Section.]~~ D. "CS" means the USOE Computer Services section.

E. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.

F. "Direct Writing Assessment (DWA)" means a USOE-designated test to measure writing performance for students in grades six and nine.

~~[E]G.~~ G. "Last day of school" means the last day classes are held in each school district/charter school.

[F]H. "Norm-reference Test (NRT)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

[G]I. "Protected test materials" means consumable and nonconsumable test booklets, directions for administering the assessments and supplementary assessment materials (e.g., videotapes) designated as protected test materials by the USOE. Protected test materials shall be used for testing only and shall be secured where they can be accessed by authorized personnel only.

[H]J. "Raw test results" means number correct out of number possible, without scores being equated and scaled.

[I]K. "Standardized tests" means tests required, consistent with Sections 53A-1-601 through 53A-1-611, to be administered to all students in identified subjects at the specified grade levels.

L. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic progress of English Language Learner students.

M. "Utah Alternative Assessment (UAA)" means a USOE-designated test to measure students with disabilities with severe cognitive disabilities.

N. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests.

[J]O. "USOE" means the Utah State Office of Education.

R277-473-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts/charter schools shall handle and administer standardized tests.

R277-473-3. Time Periods for Administering and Returning Materials.

A. School districts/charter schools shall ~~require that by or before school year 2004-2005, all schools~~ administer assessments required under Section 53A-1-603 according to the following schedule:

(1) All CRTs (elementary and secondary, English language arts, math, science) shall be given in a five week window beginning five weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be given Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October.

(3) Sixth and ninth grade Direct Writing Assessment shall be given in a three week window beginning at least 14 weeks prior to the last day of school.

B. School districts shall require that all schools within the school district or charter schools administer NRTs within the time period specified by the publisher of the test.

C. School districts/charter schools shall submit all answer sheets for the CRT and NRT tests to ~~[DCS]~~ the CS Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools ~~[with fewer than 25,000 students]~~ shall return CRT, UAA and DWA answer sheets to the USOE no later than ~~[one week after testing is completed]~~ five working days after the last day of the testing window.

~~(2) School districts with 25,000 or more students shall return CRT answer sheets no later than two weeks after testing is completed, except the science and math multiple choice tests, which shall be returned one week after testing is completed.]~~

~~(3)~~ (2) School districts/charter schools shall return NRT answer sheets to the USOE no later than ~~[one week]~~ five working days after the last day of the testing time period specified by the publisher of the test.

(3) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

(4) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional schedule schools and June 15 for year-round schedule schools beginning with the 2007-08 school year.

D. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they were not present for the entire Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five ~~[school]~~ days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test.

R277-473-4. Security of Testing Materials.

A. All test questions and answers for all standardized tests required under Sections 53A-1-601 through 53A-1-611, shall be designated protected, consistent with Section 63-2-304(5), until released by the USOE. A student's individual answer sheet shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of the number of booklets of all protected test materials sent to each

school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured in an area where only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test materials without the express permission of the specific test publisher, including the USOE.

R277-473-5. Format for Electronic Submission of Data.

A. [DCS]CS shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is, or can be made, compatible with [DCS]CS requirements and shall report data as required by the USOE.

R277-473-6. Format for Submission of Answer Sheets and Other Materials.

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned [DCS]CS data technician.

R277-473-7. Timing for Return of Results to School Districts/Charter Schools.

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with [DCS]CS, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

- (1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and
- (2) resolution of a professional practices issue that may impede reporting of the data.

D. School [D]districts/charter schools shall not release data until authorized to do so by the USOE.

R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

R277-473-9. Standardized Testing Rules and Professional Development Requirement.

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators.

C. Each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, and state application of federal requirements for funding.

E. Teachers, administrators, and school personnel shall not:

- (1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

(2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;

(4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure;

(6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

F. Violation of any of these rules may subject licensed educators to possible disciplinary action under Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I).

KEY: educational testing

Date of Enactment or Last Substantive Amendment: ~~March 27,~~ **2007**

Notice of Continuation: May 9, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603(3); 53A-1-401(3)



Education, Administration

R277-481

Charter School Accountability and Assistance

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 30094

FILED: 06/14/2007, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because amendments to Rule R277-470, Charter Schools, currently in process, now includes accountability and assistance language making this rule unnecessary. (DAR NOTE: The proposed amendment to Rule R277-470 is under DAR No. 30092 in this issue, July 1, 2007, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3), and Sections 53A-1a-509 and 53A-1a-510

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The accountability and assistance language of this rule is added to Rule R277-470.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The accountability and assistance language of this rule is added to Rule R277-470.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. The accountability and assistance language of this rule is added to Rule R277-470.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The accountability and assistance language of this rule is added to Rule R277-470.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

~~[R277-481. Charter School Accountability and Assistance.~~

~~**R277-481-1. Definitions.**~~

~~— A. "Board" means the Utah State Board of Education.~~

~~— B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.~~

~~— C. "Chartering entity" means the Board or a local board of education, whichever approves the school's charter.~~

~~— D. "Remediation plan" means a plan agreed to jointly between the chartering entity and a charter school. The plan shall identify operational inconsistencies with the school's charter or evidence of noncompliance with law, rules or district policies and methods and timelines for correcting the inconsistencies or noncompliance.~~

— E. "Review Committee" means a group designated by the Board and assigned to review Board-chartered schools composed of representatives from at least the following:

- (1) the Board;
- (2) the district in which the charter school is located;
- (3) USOE;
- (4) parent(s) designated or approved by the State PTA president; and
- (5) individual(s) designated by the governing board of the charter school under review.

— F. "USOE" means the Utah State Office of Education.

R277-481-2. Authority and Purpose.

— A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision over public education in the Board; Section 53A-1a-509 which requires annual progress reports from charter schools and provides for remedying deficiencies of charter schools by the Board; Section 53A-1a-510 which provides for termination or nonrenewal of a charter by the Board; Section 53A-1a-516 which provides for assistance to charter schools by the Board to the extent of funds available; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities:

— B. The purpose of this rule is to establish procedures for annual accountability of all charter schools and for onsite reviews of charter schools.

R277-481-3. Annual Progress Reports from Charter Schools.

— A. A charter school governing board shall provide an annual progress report to:

- (1) the school district in which the school is located;
- (2) the Board; and
- (3) the Legislature through the Education Interim Committee.

— B. The report shall at a minimum include:

- (1) a narrative describing the school's progress toward achieving its goals as described in the school's charter;
- (2) financial records of the school, as required by Section 53A-1a-509(2)(b);
- (3) the school's annual state performance report consistent with Section 53A-1-601 through 53A-1-611; and
- (4) student enrollment information, as required and reported to the USOE.

— C. All charter school assurances shall be maintained by the school and shall be available in a timely manner for review, upon request.

— D. The report shall be provided annually before November 1.

R277-481-4. Charter School Reviews.

— A. A Review Committee shall conduct site visits to Board-chartered schools:

— B. The Review Committee shall submit its findings in writing to the Board and the charter school's governing board in a timely manner following the review:

— C. Board-chartered and local board-chartered schools shall receive onsite visits at least:

- (1) after the first three months of operation;
- (2) during the third year of operation; and
- (3) every fifth year thereafter.

— D. A Board-chartered school that is under a plan for remediation shall be visited at least annually by a Review Committee.

— E. Local boards that charter schools shall establish procedures and timelines to review charter schools. Local boards shall establish a local review committee or may request technical assistance of the Review Committee established under R277-481-1E.

R277-481-5. Notice of Noncompliance.

— A. A Board-chartered or local board-chartered school that is found by the Review Committee or a local review committee through an annual progress report to be out of compliance with its charter shall be notified of the problems identified:

— (1) The school shall be notified by certified mail within 30 days of the conclusion of the Review Committee or local review committee visit or the identification of the deficiency(s) and only following review and approval by the Board or local board of the Committee's findings:

— (2) The notification shall include an explanation of the identified noncompliance.

— (3) The governing board of a charter school shall have an opportunity to meet with appropriate representatives of the chartering entity to discuss the identified problems.

— B. The charter school shall have at least 60 days following the written notification to demonstrate remediation of the identified noncompliance issues:

— C. The chartering entity may designate a longer remediation period for some or all identified noncompliance issues. The remediation period shall provide for an education program for the charter school students that is consistent with state law.

— D. Following a meeting between the Review Committee, and additional Board members, and USOE staff, the finding of noncompliance, as approved by the Board, is a final administrative determination.

— E. A Board-chartered school may request technical assistance from the USOE to remedy deficiencies. The school remains primarily responsible to remedy deficiencies.

R277-481-6. Amending a Charter.

— A. A charter may only be modified consistent with Section 53A-1a-508(4):

— B. Any and all amendments to a charter shall be in writing and shall only become effective following approval by a majority of members of the chartering entity and the governing board of the charter school.

— C. The chartering entity shall approve or reject proposed charter amendment(s) in a timely manner.

— D. A charter school shall have an opportunity to discuss proposed amendments to the charter with the chartering entity prior to action on proposed amendment(s).

— E. Absent agreement between a chartering entity and a charter school governing board concerning proposed amendments, a charter may not be amended.

R277-481-7. Compliance With and Termination of Charters.

— A. The Board may terminate a Board charter immediately, consistent with Section 53A-1a-510(3)(a):

— B. The Board may terminate a Board charter following a Review Committee review or official notification from the Board, and a meeting, if requested, by the charter school's governing board for reasons identified in Section 53A-1a-510(1):

— C. The school's governing board shall be notified consistent with Section 53A-1a-510(2) and shall have the opportunity for an appeal of the decision consistent with Section 53A-1a-510(2)(b):

~~— D. If a charter is terminated, students shall receive educational services as provided under Sections 53A-1a-510(3)(b) and 53A-1a-510(4)(a).~~

~~— E. Local boards that grant charters shall assure compliance with approved charters and have responsibility to terminate charters under Section 53A-1a-15(7) which specifies minimal procedures that shall be followed by local boards.~~

~~— F. It is the responsibility of local boards to visit and review local board chartered schools.~~

~~— G. Chartering entities may consider all reasonable alternatives and provide all assistance possible to the extent of resources available prior to termination of a charter.~~

KEY: education, charter schools

~~**Date of Enactment or Last Substantive Amendment: October 16, 2002**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-509; 53A-1a-510; 53A-1a-516; 53A-1-401(3)**~~



Education, Administration **R277-484** Data Standards, Deadlines and Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30095

FILED: 06/14/2007, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to improve the process and the time lines for school districts and charter schools to submit data files to the Utah State Office of Education.

SUMMARY OF THE RULE OR CHANGE: The amendments provide for new and revised definitions; provide for changes to deadlines for data submission; provide adjustments to deadlines; provide changes to data source for accountability reporting; provide changes to use of data for allocation of funds; provide changes to modifications of data based on audits; and provide changes to financial consequences for failure to submit timely reports.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. There is minimal required increases in reporting; reporting time lines are changed and emphasized.

❖ LOCAL GOVERNMENTS: There are no anticipated costs to local education agencies. Time lines are revised and, in some cases, data requirements are changed, but not increased. There may be minimal savings due to increased electronic reporting.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. Data reporting and time line revisions and requirements apply to schools, not to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Time lines are revised and, in some cases, data requirements are changed, but not increased.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.
R277-484. Data Standards, ~~Deadlines and Procedures~~.
R277-484-1. Definitions.**

A. "Annual Financial Report" means an account of ~~[district]~~LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

B. "Annual Program Report" means an account of ~~[district]~~LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the ~~[electronic file]~~database maintained on all licensed Utah educators. The ~~[file]~~database includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information;~~and~~
- (6) completion of employee background checks; and

~~([6]7)~~ a record of disciplinary action taken against the educator.

~~[—E. "CCD" means Common Core of Data, a set of surveys administered by the NCES.~~

~~] [F]E. "Data Clearinghouse File" means the electronic file of student level data submitted by [districts]LEAs to the USOE in the layout specified by the USOE.~~

~~[G]E. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.~~

~~G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2006-07 school year to submit data to the U.S. Department of Education.~~

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

~~[—I. "FTE" means full time equivalent.~~

~~—J. "MESA" means Mathematics Engineering Science Achievement, a program designed to encourage underserved ethnic minority and all female students to prepare for careers in those areas. The criteria of the program are defined under Section 53A-17a-121 and R277-717.~~

~~] I. "LEA" means local education agency, which may be either a public school district or a charter school.~~

~~[K]J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.~~

~~[L]K. "MST" means Mountain Standard Time.[~~

~~—M. "NCES" means National Center for Education Statistics, a branch of the United States Department of Education.~~

~~—N. "Noneonforming data" means data elements whose values are (a) missing or (b) incomplete or (c) not consistent with other values in the same or comparable reports or (d) not close to expected values based on available comparative data from similar districts or trend data for the district in question or (e) requires further analysis or verification.~~

~~—O. "School district (district)" means any organizational unit of the public education system existing under state laws as either a regular school district or a charter school.]~~

~~[P]L. "USOE" means Utah State Office of Education.[~~

~~—Q. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each school district.]~~

~~[R]M. "Year" means both the school year and the fiscal year in Utah, which runs from July 1 through June 30.~~

~~[S]N. "YICSIS" means the Youth In Custody Student Information System.~~

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any ~~[district]LEA~~ which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties~~], such as organizing education data into an automated decision support system consistent with Section 53A-1-301(2)(e)]~~ essential to the operation of statewide educational

accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the ~~[construction of the decision support system identified in Subsection 2B and to be consistent with R277-473, Testing Procedures, by providing specific standards, deadlines, and procedures by which districts and the USOE shall fulfill their respective responsibilities for the collection and reporting of nonassessment data essential to both school accountability and allocation of state funds to districts]operation of these by ensuring timely submission of data by LEAs.~~

R277-484-3. Deadlines for Data Submission.

~~[Districts]LEAs~~ shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. January 24 - Adult Education - midyear report for current year.

B. June 15~~[—]~~

~~(1) Immunization Status Report (to Utah Department of Health) - final;~~

~~(2) Safe School Incidents Report - for current year.~~

C. June ~~[30]29~~ - CACTUS - final update for current year.

D. July ~~[45]10~~, beginning with the 2007-08 school year (due July 15 for the 2006-07 school year)[

~~—(1) Adult Education - final report for prior year;]~~

~~(2)1) Bus Driver Credentials Report - for current year - Financial and Business Services;~~

~~(3)2) Classified Personnel Report - for prior year - Financial and Business Services;~~

~~(4)3) Data Clearinghouse File - final comprehensive update for prior year - Data Assessment, and Accountability;~~

~~(5)4) Driver Education Report - for prior year - Educator Quality;~~

~~(6)5) ESEA Choice and Supplemental Services Report - for prior year;~~

~~(7)6) Fee Waivers Report - for prior year;~~

~~(8)7) Fire Drill Compliance Statement - for prior year;~~

~~(9)8) [Immunization Status Report (to Utah Department of Health) - final for prior year]Home Schooled Students Report - for prior year;~~

~~(10)9) Teacher Benefits Report - for prior year;~~

~~(11)10) [YICSIS - final update for prior year]Transportation - for prior year;~~

~~(a) Bus Inventory Report;~~

~~(b) Year End Transportation Statistics Report.~~

E. August ~~[4]24~~ - ~~[Textbook Report -]Adult Education - final report~~ for prior year.

F. September ~~[4]15~~ - [

~~—(1) Extended Year for Severely Disabled Report;~~

~~—(2) Membership Audit Report - for prior year.~~

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15~~[—]~~

~~(1) Data Clearinghouse File - update as of October 1 for current year.~~

~~(2) YICSIS - update as of October 1 for current year.~~

I. November 1[

~~—(1) CACTUS - update for current year;]~~

~~(1) Data Clearinghouse File - optional revised final comprehensive update for prior year;~~

(~~1~~)² Enrollment and Transfer Student Documentation Audit Report - for current year;

(~~2~~)³ Immunization Status Report - for current year;

(~~3~~)⁴ Transportation Statistics for state funding;

(a) Schedule A1 (~~Mileage~~)^{Miles, Minutes, Students} Report) [~~B~~] - projected for current year;

(b) Schedule B (~~Time~~)^{Miscellaneous Expenditure} Report) - for [~~current~~] prior year.

J. November 15 [~~—~~]

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year.

R277-484-~~7~~⁴. Adjustments to Deadlines.

A. Deadlines that fall on a weekend, state holiday or Utah Education Association convention day in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An [~~district~~] LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance at the at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;

(2) The signatures of the [~~district~~] LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the [~~district~~] LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance shall:

(1) Take into consideration the pattern of [~~district~~] LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the [~~district~~] LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Data and Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the [~~district~~] LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 6 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

~~[F. Extensions shall affect only the status of the MSP fund transfer process and consequently the values of summary variables used in allocation formulas; extensions shall not necessarily delay the loading of detail data into the Data Warehouse for use in accountability formulas.]~~ F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 10 Final Data Clearinghouse File - final comprehensive update for prior year beginning 2007-08 school year and July 15 for 2006-07 school year only - Data Assessment, and Accountability; and

(3) November 1 error corrected Data Clearinghouse File.

R277-484-~~4~~⁵. ~~Use of~~ Data Source for Accountability Reporting.

A. ~~[Of the reports listed in Section 3 that are sources for the Data Warehouse, t] The USOE shall load operational data collections [~~them~~] into the Data Warehouse as of the submission deadlines specified.~~

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA [~~—~~]; and

(3) submission of data files to the U.S. Department of Education via EDEN. [~~—~~]

~~C. If the data available to the Data Warehouse as of the final deadline is determined to be incomplete or inaccurate, or does not conform to comparable data sets, or further analysis and verification is needed, the USOE shall:~~

~~(1) load the data into the Data Warehouse as is; and~~

~~(2) notify users of accountability reports of specific problems with the data that may affect its reliability or interpretation. Such notification may take the form of a technical appendix on data quality.~~

~~D. The CACTUS update of November 1 shall be the sole official source of teacher FTE data by school for reporting to the NCES on the CCD nonfiscal survey.]~~

R277-484-~~5~~⁶. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

~~[— A. Of the reports listed in Section 3:~~

~~(1) the Data Clearinghouse File of July 15 shall be the sole official source of prior year data for MSP allocation formulas which require summary statistics on the following types of students:~~

~~(a) Early Graduates, under Section 53A-15-102 and R277-703;~~

~~(b) English Language Learner (Limited English Proficient);~~

~~(c) Free or Reduced Price Lunch Eligible (Economically Disadvantaged, Low Income);~~

~~(d) Homeless;~~

~~(e) Immigrant;~~

~~(f) MESA, under Section 53A-17a-121 and R277-717;~~

~~(g) Migrant;~~

~~(h) Mobile;~~

~~(i) Racial/Ethnic Minority.~~

~~(2) YICSIS shall be the sole official source of membership data on YIC students.~~

~~(3) the Data Clearinghouse File and YICSIS update of July 15 shall be the sole official source of data for preaudit aggregate membership.~~

~~(4) the Data Clearinghouse File of October 15 shall be the sole official source of preaudit data for the Fall Enrollment count.~~

~~(5) the CACTUS update of June 30 shall be the sole official source of prior year data for MSP allocation formulas which require summary statistics on teachers.~~

~~B. If the data available for allocation purposes is inconsistent with other data, and the cause of the nonconformity is determined by~~

the USOE to be outside of the district's control, the USOE may impute values to ensure continued funding.

C. If the USOE uses imputed values, it shall also document how the cause of nonconforming data was determined as well as the method by which replacement values were imputed in its fiscal work papers.

R277-484-[8]7. ~~[Modifications of Data]~~ Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level [A] aggregate membership and fall enrollment [for Kindergarten, Grades 1-12, Special Education (Self-Contained), and Homebound and Hospitalized students shall] counts may be modified by the USOE [to match] on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit [is conducted by an independent auditor in accordance with the State of Utah Legal Compliance Audit Guide; and] report review team shall make its determination within five working days of the authorized audit report deadline;

(2) [the audit report is submitted by the auditor to the USOE] values can only be adjusted downward when audit reports are received after the authorized deadlines.

B. If an otherwise acceptable nonfiscal audit report is received by the USOE too late to incorporate into the next scheduled update of the MSP budget for the fiscal year in question, the USOE shall:

(1) use the corresponding preaudit data submitted by the district in the allocation formulas; and

(2) indicate in the MSP budget publication that the district's allocations are based on preaudit data.

R277-484-[6]8. Financial Consequences of Failure to Submit Reports on Time.

A. If an [district] LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the [district] LEA has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount [for the following reports; in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

~~(a) Annual Financial Report;~~

~~(b) Annual Program Report;~~

~~(c) Data Clearinghouse File (July 15);~~

~~(d) Data Clearinghouse File (October 15);~~

~~(e) Financial Audit Report;~~

(2) 100% of the monthly MSP transfer amount for the specific program, if the report pertains to any of the following programs:

~~(a) Adult Education (July 15);~~

~~(b) Driver Education;~~

~~(c) Safe Schools;~~

~~(d) Special Education (December 15—Data Clearinghouse File);~~

~~(e) Transportation (November 1);~~

~~(f) Youth In Custody.~~

~~](3)2~~ Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year [Fall] Mid Year

Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of [July] June 15.

B. If the USOE has stopped the MSP fund transfer process for an [district] LEA, the USOE shall:

(1) upon receipt of a late report from that [district] LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. before the [twentieth] tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the [twentieth] tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the [local board or] governing board [of a charter school] if [the district staff or charter school] LEA staff are not responsive in correcting ongoing problems with data.

KEY: data standards, reports, deadlines

Date of Enactment or Last Substantive Amendment: ~~June 17, 2003~~ 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-301(2)(e)



Education, Administration
R277-487
Charter School Revolving Loan Fund

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 30096

FILED: 06/14/2007, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because amendments to R277-470, Charter Schools, currently in process, now includes charter school revolving loan fund language revised in H.B. 164 by the 2007 Legislature making this rule unnecessary. (DAR NOTES: The proposed amendment to Rule R277-470 is under DAR No. 30092 in this issue, July 1, 2007, of the Bulletin. H.B. 164 (2007) is found at Chapter 344, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-21-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The charter school revolving loan fund language revised in H.B. 164 (2007) is added to Rule R277-470.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The charter school revolving loan fund language of this rule is added to Rule R277-470.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The charter school revolving loan fund language of this rule is added to Rule R277-470.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The charter school revolving loan fund language of this rule is added to Rule R277-470.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

~~[R277-487. Charter School Revolving Loan Fund.~~

~~R277-487-1. Definitions.~~

~~— A. "Application" means the application provided by the Loan Committee available from the USOE or online at www.usoe.k12.ut.us.~~

~~— B. "Board" means Utah State Board of Education.~~

~~— C. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.~~

~~— D. "Charter school assurances" means written agreements available from the USOE and signed by charter schools that include such written documentation as adequate insurance, civil rights compliance, and compliance with health and safety requirements.~~

~~— E. "Charter School Revolving Loan Committee (Loan Committee)" is a committee appointed by the Superintendent and comprised of members of the Finance Committee of the Board representing expertise in finance and real estate, a charter school representative, and a member nominated by the Governor. The Loan Committee shall review applications and recommend approval of loans to the Superintendent.~~

~~— F. "Superintendent" means the State Superintendent of Public Instruction.~~

~~— G. "USOE" means Utah State Office of Education.~~

~~R277-487-2. Authority and Purpose.~~

~~— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-21-104 which requires the Board to make rules regarding the school building revolving account that includes charter school building Subaccount; Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities; and, Section 53A-21-104 which creates the Charter School Building Subaccount.~~

~~— B. The purpose of this rule is to provide procedures and standards for eligible charter schools to apply for and receive loans to pay for the costs of constructing, renovating, and purchasing charter school facilities.~~

~~R277-487-3. Program Eligibility.~~

~~— A. Applicant Eligibility:~~

~~— (1) Schools shall have received final and official approval of their charters by either a local board of education or the Board and, if chartered by the Board, signed a contract under Section 53A-1a-505(3)(b) prior to making application for a loan.~~

~~— (a) Schools chartered by a local board of education shall provide a signed copy of the Utah Charter School Assurances contained in the Charter School Application for Board chartered schools.~~

~~— (b) Existing schools chartered by the Board shall provide written affirmation that the schools are in compliance with the Utah Charter School Assurances.~~

~~— (2) Charter schools operating in facilities owned by a school district or other governmental entity (e.g. state, city, county, public institution of higher education) are not eligible for this program unless they are paying reasonable rent for the facility to the governmental owner.~~

~~— B. Project Eligibility:~~

~~— (1) Section 53A-21-102 authorizes a loan and application procedure to pay the costs of constructing, renovating, and purchasing charter school facilities.~~

~~— (2) All applicants shall demonstrate that the construction, renovation or purchase of facilities shall meet all applicable requirements of law, administrative rule, and building codes prior to submitting a loan application.~~

~~— (3) Compliance includes administrative approval of safety and health requirements and accommodations mandated by the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA).~~

~~R277-487-4. Application Process.~~

~~— A. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.~~

~~— B. To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation. The information requested is necessary to evaluate the loan request based on the review criteria.~~

~~— C. The evaluation/review shall not begin until all information is provided to the satisfaction of the Loan Committee.~~

~~— D. The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:~~

- (1) agrees to enter into the loan as provided in the application materials;
 - (2) agrees to the interest established in R277-487-5E and repayment schedule of the loan designated by the Superintendent;
 - (3) agrees that loan funds shall only be used for facilities consistent with the purposes of the approved charter;
 - (4) agrees to any and all audits or financial reviews ordered by the Loan Committee;
 - (5) agrees to any and all inspections or reviews ordered by the Loan Committee;
 - (6) specifies the proposed loan repayment period; and
 - (7) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.
- E. If the Loan Committee recommends approval of a loan application, the Loan Committee's recommendation shall include:
- (1) the amount of the loan;
 - (2) the repayment schedule; and
 - (3) the interest rate to be charged.

R277-487-5. Funding Criteria.

- A. The maximum amount per loan is \$300,000.
- B. No charter school shall have more than one outstanding loan from the Charter School Revolving Loan Fund at a single time.
- C. The loan may not exceed 75% of total project costs.
- D. Priority shall be given to projects necessary to address student health and safety issues.
- E. Interest shall be charged on the loan at the rate which the State Treasurer would receive for a five (5) year AAA-rated general obligation bond at the date of loan recommendation by the Loan Committee.

R277-487-6. Review Criteria for a Loan.

- A. The Loan Committee and Superintendent may consider the following and any additional criteria deemed relevant when recommending or approving a charter school's loan application:
 - (1) Soundness of the financial business plan of the applicant charter school;
 - (a) Soundness shall be determined by such factors as:
 - (i) debt to income ratios performed and available with application;
 - (ii) adequately performed cash flow analysis;
 - (iii) available and current financial statement analysis; and
 - (iv) adequate estimate of non-real estate assets.
 - (b) The Loan Committee may request additional documentation of this criterion, as needed.
 - (2) Availability of other sources of funding for the charter school;
 - (3) Geographic distribution of loans made from the Charter School Revolving Loan Fund;
 - (4) The impact that receipt of funds received pursuant to this section shall have on the charter school's receipt of other private and public financing;
 - (5) Plans for creative uses of the funds received pursuant to this section, such as loan guarantees or other types of credit enhancements; and
 - (6) The overall facility needs of the charter school.
- B. Priority for loans from the Charter School Revolving Loan Fund shall be given to charter schools in the first year of operation for startup facility and renovation costs.

— C. Because charter schools are frequently start-up programs and do not have any financial history, the loan approval process shall rely heavily on acceptable budgets and cash flow statements that demonstrate the school's ability to repay the loans. The proposed budgets cannot show deficits.

— D. The loan approval shall rely heavily on the relevant experience and expertise of the management and governing board of the school.

— E. The loan approval process disfavors making fundraising too large a portion of the revenues of a charter school. The Loan Committee may question the school's ability to repay the loan if the projected fundraising goal appears unrealistic or accounts for too high a percentage of the charter school's annual operating budget (more than 15 percent). A school may be asked to back up an ambitious fundraising goal with a detailed plan and designated manpower toward this effort.

R277-487-7. Loan Approval.

- A. The Superintendent shall have the final authority to approve loans following recommendation by the Loan Committee.
- B. The Superintendent's decision is final and is not subject to additional administrative appeals.
- C. If an application is refused, a school may reapply only with material changes to the original application and may be considered following other applicants.

R277-487-8. Property Reversion or Disposal in the Event of Charter School Revocation or Loan Default.

- A. If the school creates, incurs, or assumes any indebtedness in addition to a loan pursuant to this rule, the charter school shall ensure that the instrument documenting indebtedness attests that repayment rights of any and all creditors are subordinate to repayment rights of the Board.
- B. Property purchased by the charter school remains the property of the charter school until such a time as its charter is revoked or the school closes.
- C. In the event that a charter school closes, it is the responsibility of the charter school governing body to properly dispose of all school assets. Any assets remaining after satisfying all indebtedness associated with a loan from the Board and the claims of creditors have been satisfied shall revert to the Board and deposited in the revolving loan account.
- D. The reversion of such equipment, property, and furnishings shall focus on recoverable assets, but not on intangible or irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations.
- E. The reversion of all property secured with public funds is subject to the complete satisfaction of all lawful liens or encumbrances.
- F. Property purchased or leased with state funds by a charter school may be used only for a purpose for which a school district may use school district property.
- G. The charter school shall maintain the property and improvements to such a degree that market value is preserved.

R277-487-9. Repayment Provisions.

- A. Loans shall be repaid within five years, beginning one year from the date the loan is approved by the Superintendent.
- B. Repayments, including interest payments, shall be made in equal monthly installments over the repayment period.

— C. Each installment shall be deducted from the monthly funds transfer to the charter school.

— D. The amount being repaid (both principal and interest) shall be deposited into the Charter School Building Subaccount in the State Treasury for subsequent loans to future borrowers.

KEY: charter schools, loans, facilities

Date of Enactment or Last Substantive Amendment: November 6, 2003

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-21-104; 53A-1-401(3)]



Education, Administration

R277-510

Educator Licensing - Highly Qualified Teachers

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE No.: 30097
 FILED: 06/14/2007, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed and reenacted to provide for the U.S. Department of Education's directive that all states submit a revised plan for achieving highly qualified status for all teacher assignments. Additionally, the rule is reorganized and terminology is changed.

SUMMARY OF THE RULE OR CHANGE: This rule adds new definitions including "teacher of record" and "veteran teacher" and deletes definitions including High Objective Uniform State Standard of Evaluation (HOUSSE) standards. The rule changes terminology from "highly qualified teacher" to a teacher's assignment designated as highly qualified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-401(1)(a) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Primarily terminology is revised to designate teacher assignments as "highly qualified" rather than people as highly qualified.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The rule uses new terminology.
- ❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. Schools, not individuals, will accept revised terminology.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Schools, not individuals, will accept revised terminology.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I

see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

~~**[R277-510. Educator Licensing - Highly Qualified Teachers. R277-510-1. Definitions.**~~

- ~~— A. "Board" means the Utah State Board of Education.~~
- ~~— B. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).~~
- ~~— C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer or the date on which an educator receives a Core academic subject assignment for the first time.~~
- ~~— D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state approved endorsement program.~~
- ~~— E. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.~~
- ~~— F. "HOUSSE" means High Objective Uniform State Standard of Evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).~~
- ~~— G. "HOUSSE points" means points or hours earned in activities identified under R277-501-3A, B, or C.~~
- ~~— H. "IDEA" means the federal Individuals with Disabilities Education Act, Title I, Part A, Section 602.~~
- ~~— I. "Multiple subject qualified" means that a licensed educator who is highly qualified in at least one Core academic subject may be designated highly qualified and provide instruction in science, social studies, language arts, and mathematics, or any combination of those courses, as assigned by the school district or the school.~~
- ~~— J. "Multiple subject teacher" means a teacher in a necessarily existent small school as defined under R277-445 or as a special~~

education teacher defined under R277-510H, or in a Youth in Custody program as defined under R277-709 or a board designated alternative school whose size meets necessarily existent small school criteria as defined under R277-445, who teaches two or more Core academic subjects defined under R277-510-1B or under R277-700.

— K. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445, teachers in alternative schools who meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOE approved university-level courses in each course taught by the teacher holding a restricted endorsement.

— L. "Standard license area of concentration" means that the educator has successfully completed three years of teaching in the license area.

— M. "USOE" means the Utah State Office of Education.

R277-510-2. Authority and Purpose.

— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities. Allows Board to license

— B. The purpose of this rule is to provide definitions and requirements for an educator to meet federal requirements for highly qualified status.

R277-510-3. NCLB Highly Qualified—Secondary Teachers.

— In order to meet the federal requirements under NCLB, a secondary educator shall have a bachelor's degree, an educator license and one of the following for each of the teacher's NCLB Core academic subject teaching assignments:

— A. a University major degree, masters degree, doctoral degree or National Board Certification; or

— B. documentation that the teacher has passed, at a level designated by the USOE, an appropriate Board approved subject area test(s); or

— C. documentation of coursework equivalent to a major degree (30 semester or 45 quarter hours); or

— D. documentation of satisfaction of Utah's HOUSSE requirements for assignments as follows:

— (1) an endorsement in a subject area directly related to the educator's academic major; or

— (2) a current endorsement for the assignment and completion of 200 professional development points, accrued after the endorsement was approved by the USOE, directly related to the area in which the teacher seeks to meet the federal highly qualified teacher standard under R277-510-1E as applicable. No more than 100 points may be earned for successful teaching in related area(s); and

— E. All Utah secondary teachers who teach Core academic subjects shall have points and documentation, determined by the employing school district, of highly qualified status before June 30, 2006. Documentation includes official transcripts, annual teaching evaluation(s), data of adequate student achievement.

R277-510-4. NCLB Highly Qualified—Special Education Teachers.

— A. In order to meet the federal requirements under HOUSSE, NCLB, and the requirements of IDEA, a special educator assigned as the classroom teacher of record for any K-8 Core academic subject shall satisfy (1) and (2) and (3) or (1) and (2) and (4) or (1) and (2) and (5) before June 30, 2006 as provided below:

— (1) has a current Utah educator license; and

— (2) is assigned consistent with the teacher's current state educator license; and

— (3) has met the requirements for highly qualified status under R277-510-5; or

— (4) a K-8 special educator with a mild/moderate endorsement defined under R277-504-1K(1), hearing impaired endorsement defined under R277-504-1K(3), visually impaired endorsement defined under R277-504-1K(4), or K-12 special educator with a severe license defined under R277-504-1K(2) shall pass a Board-approved content test at the state designated passing score; or

— (5) documentation of satisfaction of Utah's HOUSSE requirements as follows:

— (a) has completed a minimum of 36 semester hours of Core academic subject courses from an accredited college/university consistent with R277-503, or other professional development directly related to the educator's assignment. The teacher's employer shall review and retain documentation verifying completion of these requirements. Transcript credits shall have been completed with academic grades of C or better:

— (i) nine semester hours of language arts/reading or the equivalent as approved by the USOE; and

— (ii) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

— (iii) nine semester hours of social sciences or the equivalent as approved by the USOE; and

— (iv) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

— (v) three semester hours of the arts or the equivalent as approved by the USOE.

— B. To meet the highly qualified requirements under NCLB, a K-12 special educator endorsed in mild/moderate, or hearing impairments, or visual impairments, assigned as the classroom teacher of record for any K-12 course reported under NCLB statute shall satisfy the following before June 30, 2006:

— (1) has a current Utah educator license; and

— (2) is assigned consistent with the educator's current state license; and

— (3) shall satisfy highly qualified status in at least one Core academic subject by:

— (a) meeting the requirements of R277-510-3; or

— (b) having a restricted endorsement as defined under R277-510-1J or its equivalent, and passing an appropriate Board approved subject assessment; and

— (4) Special educators who teach two or more subjects shall satisfy highly qualified status by:

— (a) satisfying R277-510-4B(3)(a) or (b); and

— (b) submitting documentation that the educator has passed a Board approved multiple subject test with a passing score at the state designated passing score with subtest scores in the average range or higher; and

—(c) shall not be assigned to teach a Core academic subject if the educator did not pass the appropriate subtest in the average range or higher.

—(5) Special educators who teach two or more subjects may have two years beyond the special educator's date of hire or June 30, 2006 to become highly qualified in additional course assignments.

—C. School districts/charter schools are responsible for monitoring and appropriately assigning special educators consistent with this rule.

—D. Sixth grade special educators assigned in elementary school settings shall satisfy R277-510-4A to be highly qualified.

R277-510-5. NCLB Highly Qualified—Elementary and Early Childhood Teachers.

—In order to meet the federal requirements of NCLB, an elementary/early childhood educator shall satisfy before June 30, 2006 R277-510-5A and B and C or A and B and D and E as provided below:

—A. the educator has a current Utah educator license; and

—B. the educator is assigned consistent with the teacher's current state educator license; and

—C. an elementary/early childhood teacher shall pass Board-approved content test(s);

—D. documentation of satisfaction of Utah's HOUSSE requirements for assignments as follows:

—(1) has completed an elementary or early childhood major or both from an accredited college or university; or

—(2) the teacher's employer shall review the teacher's college/university transcripts and subsequent professional development to document that the following have been satisfied with academic grades of C or better:

—(a) nine semester hours of language arts/reading or the equivalent as approved by the USOE; and

—(b) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

—(c) nine semester hours of social sciences or the equivalent as approved by the USOE; and

—(d) nine semester hours of college level mathematics or the equivalent as approved by the USOE;

—(e) three semester hours of the arts or the equivalent as approved by the USOE; and

—E. the educator has obtained a Level 2 license with a standard license area of concentration.

R277-510-6. NCLB Highly Qualified—Multiple Subject Teachers.

—A. In order to meet federal requirements under a HOUSSE standard, a multiple subject teacher, as defined under R277-510-1J, shall satisfy R277-510-6A(1), (2), (3) and (4) or (5) and (6)(a) or (b) as provided below:

—(1) the educator has a current Utah educator license; and

—(2) the educator is assigned consistent with the educator's current license; and

—(3) the educator is highly qualified in at least one Core academic subject, as defined under R277-510-1B or R277-700; and

—(4) the educator holds an endorsement as defined under R277-510-1D in each teaching assignment; or

—(5) the educator holds a restricted endorsement as defined under R277-510-1K; and

—(6) the educator submits a passing score on a Board-approved test providing:

—(a) documentation that the teacher has passed, at a level designated by the USOE, an appropriate Board-approved subject area test(s); or

—(b) documentation that the teacher has passed a Board-approved multiple subject test with a passing score.

—B. In addition, an educator shall satisfy:

—(1) R277-510-6A(1) and (2) and (4) and take the Board-approved content test or a Board-approved multiple subject test and pass at the state-designated passing score with all subtest scores in the average range or higher; or

—(2) R277-510-6A(1) and (2) and (5) and take the Board-approved content test or a Board-approved multiple subject test and pass at the state-designated passing score with all subtest scores in the average range or higher.

—C. An educator shall not be assigned to teach a Core academic subject if the educator did not pass the appropriate subtest in the average range or higher.

—D. School districts/charter schools are responsible for monitoring and assigning educators consistent with this rule.

—E. Multiple subject teachers in necessarily-existent small school settings who are designated highly qualified in at least one Core academic subject, under R277-510-1B, shall have three school years from the date of hire to become highly qualified in additional Core academic subject teaching assignment(s).

—F. A multiple subject teacher in necessarily-existent small school settings shall have one additional three-year period from the date of hire to become highly qualified in any and all additional Core academic subject teaching assignment(s).]

R277-510. Educator Licensing - Highly Qualified Assignment.

R277-510-1. Definitions.

—A. "Board" means the Utah State Board of Education.

—B. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

—C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer for a position requiring a professional educator license.

—D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program, consistent with R277-503-1.E and R277-503-5.

—E. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

—F. "IDEA" means the Individuals with Disabilities Education Act, Title I, Part A, Section 602.

—G. "Multiple subject teacher" means a teacher in a necessarily-existent small school as defined under R277-445 or as a special education teacher defined under R277-510H, or in a Youth in Custody program as defined under R277-709 or a board-designated alternative school whose size meets necessarily-existent small school criteria as defined under R277-445, who teaches two or more Core academic subjects defined under R277-510-1B or under R277-700.

—H. "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

—I. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily-existent small schools as

determined under R277-445, teachers in alternative schools who meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

J. "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for USOE data submissions.

K. "USOE" means the Utah State Office of Education.

L. "Veteran Teacher" means a teacher whose date of hire in a Utah public school was prior to July 1, 2005, and who held a level 1, 2, or 3 license at that time.

R277-510-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(1)(a) which directs the Board to establish rules setting minimum standards for educators who provide direct student services, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator assignment to meet federal requirements for highly qualified status.

R277-510-3. NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with an early childhood area of concentration; and
- (3) at least one of the following:
 - (a) a passing score at the level designated by the USOE on a Board-approved subject area test; or
 - (b) a Level 2 license with documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8.

B. NCLB requirements do not apply to any pre-K assignment.

R277-510-4. NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with an elementary area of concentration; and
- (3) at least one of the following:
 - (a) a passing score at the level designated by the USOE on a Board-approved subject area test; or

(b) a Level 2 license with documentation of satisfaction of veteran teacher requirements for the assignment as described in R277-510-8.

B. A teacher holding a license with an elementary area of concentration assigned to teach an NCLB core academic subject in a secondary school shall meet the requirements of R277-510-3(B).

R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a secondary area of concentration and endorsement in the content area assigned; and
- (3) at least one of the following in the assignment content area:
 - (a) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or
 - (b) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or
 - (c) a passing score at the level designated by the USOE on a Board-approved subject area test; if no Board-approved test is available, an endorsement is sufficient for highly qualified status; or
 - (d) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8.

B. An assignment in grades 7 or 8 given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of R277-510-5A(3) above.

C. These requirements are only applicable to NCLB core academic subject assignments.

D. Each NCLB core academic course assignment is subject to the above standards.

R277-510-6. NCLB Highly Qualified Assignments - Special Education Teachers.

A. For a special education teacher assignment in grades K-8, or K-12 teaching students who are assessed using the Utah Alternative Assessment, to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a special education area of concentration; and
- (3) any one of the following in the assignment content area:
 - (a) a passing score on a Board-approved elementary content test; or
 - (b) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or
 - (c) a university major degree, masters degree, doctoral degree, or National Board Certification and an endorsement in the content area; or
 - (d) a course work equivalent of a major degree (30 semester or 45 quarter hours) and an endorsement in the content area; or
 - (e) a passing score at the level designated by the USOE on a Board-approved subject area test and an endorsement in the content area.

(4) A special educator who would be NCLB highly qualified as a teacher of record in an elementary/early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

B. For a special education teacher assignment in grades 9-12 to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a special education area of concentration; and
- (3) any one of the following in the assignment content area:
 - (a) a passing score on a Board-approved fundamental multi-subject test; or
 - (b) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or
 - (c) a university major degree, masters degree, doctoral degree, or National Board Certification; or
 - (d) a course work equivalent of a major degree (30 semester or 45 quarter hours); or
 - (e) a passing score at the level designated by the USOE on a Board-approved subject area test.

C. IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this rule. R277-510 does not replace, supercede, or nullify any of those requirements.

R277-510-7. NCLB Highly Qualified Assignments - Small Schools Multiple Subject Teachers 7 - 12.

A. For a small school multiple subject teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a secondary area of concentration; and
- (3) an endorsement or a restricted endorsement in the assignment content area; and
- (4) at least one of the following in the assignment content area:
 - (a) a university major degree, masters degree, doctoral degree, or National Board Certification; or
 - (b) a course work equivalent of a major degree (30 semester or 45 quarter hours); or
 - (c) a passing score at the level designated by the USOE on a Board-approved subject area test; or
 - (d) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or
 - (e) a passing score on a Board-approved fundamental multi-subject test.

B. The Director of Educator Quality Services at the Utah State Office of Education shall annually publish a list of qualifying small schools, consistent with R277-445.

R277-510-8. Highly Qualified Requirements for Assignment of Veteran Teachers.

A. Veteran teachers in Early Childhood and Elementary assignments who hold Early Childhood or Elementary areas of concentration may meet highly qualified requirements by:

- (1) completion of an elementary or early childhood major or both from an accredited university; or

(2) a review of college and university transcripts that identify that credits have been earned in the following areas with academic grades of C or better:

- (a) Nine semester hours of language arts/ reading or the equivalent as approved by the USOE; and
- (b) six semester hours of physical/biological science or the equivalent as approved by the USOE; and
- (c) nine semester hours of social sciences or the equivalent as approved by the USOE; and
- (d) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and
- (e) three semester hours of arts or the equivalent as approved by the USOE.

B. Veteran teachers in secondary NCLB core subject assignments who hold a secondary area of concentration may meet highly qualified requirements by having:

- (1) an endorsement in a subject area directly related to the teacher's academic major; or
- (2) a current endorsement for the assignment and completion of 200 professional development points, accrued after the endorsement was approved by the USOE, directly related to the area of assignment. No more than 100 points may be earned for successful teaching in the related areas.

R277-510-9. LEA Highly Qualified Plans.

A. Each district and charter school shall submit a plan to the USOE describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments to which this rule applies. Each plan shall be updated annually.

B. The USOE shall review district and charter school plans and provide technical support to districts and charter schools to assist them in carrying out their plans to the extent of staff/resources available.

C. The USOE shall set timelines for submission and review of district and charter school plans.

R277-510-10. Highly Qualified Time Lines.

A. NCLB requires that all NCLB core subject assignments meet highly qualified standards as of July 1, 2006. Utah school districts and charter schools shall work toward and have plans in place to ensure progress toward this requirement.

B. Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

R277-510-11. Highly Qualified Rules in Relation to Other Board Rules.

Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status. R277-510 does not supercede, replace, or nullify any of these requirements.

KEY: educators, highly qualified

Date of Enactment or Last Substantive Amendment: ~~March 6, 2006~~ 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~53A-6-104~~ 53A-1-401(1)(a); 53A-1-401(3)

◆ ————— ◆

Education, Administration
R277-713
 Concurrent Enrollment of High School
 Students in College Courses

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 30098
 FILED: 06/14/2007, 15:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2007 Legislature passed H.B. 79 which separates concurrent enrollment from other accelerated learning programs. This rule is amended to provide for changes to the funding and use of concurrent enrollment funds and add requirements for annual reporting and annual contracts. (DAR NOTE: H.B. 79 (2007) is found at Chapter 368, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The amendments provide for changes to courses and students' participation; changes to program delivery; changes to faculty requirements; changes to concurrent enrollment funding and use of funds; and changes in annual contracts and other student instruction issues.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-17a-120.5 and Subsections 53A-1-402(1)(c) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funds were appropriated by the 2007 Legislature in H.B. 79 and the distribution of those funds between higher education and public education were determined by the Legislature.
- ❖ LOCAL GOVERNMENTS: Some local education agencies may save money and others may spend money due to the legislative distribution of funds. Greater consistency and fairness of costs to school districts and higher education institutions participating in concurrent enrollment is anticipated by the Legislature's division of funds. What costs or savings may be is unknown until the end of the first year.
- ❖ OTHER PERSONS: Students and parents should have no additional concurrent enrollment costs from previous year. Increase consistency and accountability should result in savings to parents and students over time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Public schools and higher education institutions will implement the changes within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-713. Concurrent Enrollment of High School Students in College Courses.

R277-713-1. Definitions.

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school students.

C. "Board" means the Utah State Board of Education.

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "USHE" means the Utah System of Higher Education.

G. "USOE" means the Utah State Office of Education.

R277-713-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules ~~[for accelerated learning programs]~~ providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to

adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

A. ~~Local~~ Schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

R277-713-4. Courses and Student Participation.

A. Course registration and the awarding of USHE institution credit for concurrent enrollment courses are the province of colleges and universities governed by USHE policies.

B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds. ~~[Courses may be added or deleted from the master list with adequate notice to teachers at USHE institutions and public schools.]~~

E. Beginning with the 2008-09 school year, the Board of Regents, after consultation with school districts/charter schools, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

~~[E]~~E. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.

~~[F]~~G. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.

~~[G]~~H. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

~~[H]~~I. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

R277-713-5. Program Delivery.

A. Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program~~[-]~~, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved, consistent with Section 53A-17a-120(2)(a).

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

E. Concurrent enrollment is intended primarily for students in their last two years of high school. ~~[Attendance]~~Participation by ~~[younger]~~students before their junior year shall be approved by both the public school and the USHE institution, and be consistent with a student's SEP/SEOP.

F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per student per year.

G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).

B. Students may be assessed a one-time enrollment charge per institution.

C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers. ~~[The district may withhold concurrent enrollment funds to cover fee waiver costs.]~~

F. Credit:

(1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

(4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

R277-713-7. Faculty Requirements.

A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Public education teachers shall have secondary endorsements in the subject area(s) to be taught and meet highly qualified standards for their assignment(s) consistent with R277-510. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.

B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) USHE institutions and secondary schools shall share expertise and ~~[in-service training]~~ professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

C. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

D. District use of state funds for concurrent enrollment is limited to the following:

(1) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of district or school personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) districts/charter schools may purchase classroom equipment required to conduct concurrent enrollment courses, in the aggregate, not to exceed ten (10) percent of a district's/charter school's annual allocation of concurrent enrollment monies.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

~~[D. Colleges or universities shall receive concurrent enrollment funds from school districts based on the Annual Concurrent Enrollment Contract and applicable rules.~~

~~E. District use of state funds for concurrent enrollment is limited to the following:~~

~~(1) tuition for students as established by an agreement with the USHE institution;~~

~~(2) a share of the costs of supervision and monitoring by USHE institution employees according to the annual contractual agreement;~~

~~(3) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;~~

~~(4) assistance with delivery costs for distance learning programs;~~

~~(5) participation in the costs of district or school personnel who work with the program;~~

~~(6) student textbooks and other instructional materials; and~~

~~(7) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.~~

~~(8) other uses approved in writing by the USOE consistent with the law and purposes of this rule.]E. School districts/charter schools shall provide the USOE with end-of-year expenditures reports itemized by the categories identified in R277-713-8E.~~

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating school districts/~~[public]~~ charter schools and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

(a) each school district/charter school shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

(b) each school district/charter school shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7B and C.

B. A school district/charter school shall provide a copy of the annual contract entered into between a school district/charter school and a USHE institution for the upcoming school year no later than May 30 annually.

[B]C. The annual concurrent enrollment agreement between a USHE institution and a [school]school district[~~or~~]/charter school who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

[C]D. This rule shall be effective on the date posted with the Division of Administrative Rules, and shall apply to students who enroll in course work beginning with the 2005-2006 school year, and continuing thereafter.

KEY: students, curricula, higher education

Date of Enactment or Last Substantive Amendment: ~~March 21, 2005~~2007

Notice of Continuation: September 12, 2002

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-17a-120; 53A-1-402(1)(c); 53A-1-401(3)

Human Services, Services for People with Disabilities

R539-9

Supported Employment Pilot Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30085

FILED: 06/14/2007, 12:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to remove the eligibility requirement for a "T" score of less than 50.5. This requirement has proven to be too restrictive and is limiting the number of individuals eligible for the program. This action will permit the Division to take more individuals off of the waiting list for Division services.

SUMMARY OF THE RULE OR CHANGE: This rule removes the requirement that applicants have a "T" score of less than 50.5 to be eligible for the Supported Employment Pilot Program and also removes the definition of a "T" score. (DAR NOTE: There is a corresponding 120-day (emergency) rule under DAR No. 30116 that is effective as of 07/01/2007 that will be published in the July 15, 2007, issue of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-103.1

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Supported Employment Pilot Program will be administered within the \$150,000 appropriation for this program and does not create an entitlement related to a Medicaid Waiver. This rule change will permit more individuals to be eligible, but will not affect the overall budget because the number of persons eligible will remain within the number originally anticipated for this the program.

❖ **LOCAL GOVERNMENTS:** The Division has evaluated all local government agencies as they relate to employment services for persons with disabilities. The Supported Employment Pilot Program does not impact cost or savings to local governments. This program involves the Division and the persons who directly receive services. No agency of any local government provides support, or financial assistance to the persons eligible for this program.

❖ **OTHER PERSONS:** The Division has reviewed all possible other persons as they relate to employment services for persons with disabilities. The Supported Employment Pilot Program does not impact cost or savings for other persons. No other person provides support, or financial assistance to the persons eligible for this program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons. Affected persons are assisted by Division staff to apply for the services and if eligible for the program, are provided services. There are no costs to apply for the services or to receive services or to comply with the eligibility requirements for the services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Supported Employment services are provided by private businesses to Persons who meet the eligibility standards for the pilot program. Services will be provided by businesses under contract with the Department of Humans Services, Division of Services for People with Disabilities. Lisa-Michele Church, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: George Kelner, Director

R539. Human Services, Services for People with Disabilities.

R539-9. Supported Employment Pilot Program.

R539-9-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's pilot program to provide supported employment services for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

~~[(2) "T score" means a standardized score used to determine a person's priority on the waiting list.~~

[(3)2] "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

[(4)3] "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

[(5)4] "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

[(6)5] "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and PASS or IRWE.

R539-9-3 Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the supported employment pilot program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot,

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the pilot,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the Supported Employment Pilot Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed signed by a rehabilitation counselor and a support coordinator,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of supported employment services for the duration of the pilot program, and

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through P.L. 104-188, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD, ~~and~~

~~[(12) the person has a T score below 50.5.]~~

R539-9-4 Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment

Date of Enactment or Last Substantive Amendment: August 22, 2006

Authorizing, and Implemented or Interpreted Law: 62A-5-103.1



Insurance, Administration
R590-93
 Replacement of Life Insurance and
 Annuities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30042

FILED: 06/08/2007, 10:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the last comment period, the department received a request to clarify if the "days" referred to in Subsection R590-93-6(3)(b) was calendar or business days. The department then went through the rule to clarify all such uses of "days".

SUMMARY OF THE RULE OR CHANGE: This rule has five instances in which "days" has been used without clarifying if they are

"business days" or "calendar days". The changes make this clarification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The changes to this rule will have no fiscal impact on revenues to the state's budget or workload on the department. No additional fees will be collected or filings made to the department as a result of these changes.
- ❖ LOCAL GOVERNMENTS: The changes to this rule only deal with the relationship between the department and their licensees.
- ❖ OTHER PERSONS: The changes to this rule will have no effect on life insurers or their insured since it just makes clear what is already occurring in the marketplace now.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will have no effect on life insurers or their insured since it just makes clear what is already occurring in the marketplace now.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on Utah businesses. They are already following the guidelines noted in the changes. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-93. Replacement of Life Insurance and Annuities.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

- (a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five ~~working~~ business days of the date the Notice is received by the company;

(c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten business days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 business days of a replacement notification send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing this rule 45 calendar days after the effective date.

KEY: life insurance, annuity replacement

Date of Enactment or Last Substantive Amendment: May 29, 2007

Notice of Continuation: April 28, 2004

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402



Insurance, Administration
R590-153-6
Permitted Advertising and Business Entertainment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30080

FILED: 06/13/2007, 12:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are being made to keep up with inflation.

SUMMARY OF THE RULE OR CHANGE: Some of the dollar amounts that title producers are allowed to expend for advertising and entertainment have been increased to keep up with inflation in Subsections R590-153-6(D), (E), (F)(3), (G)(3) and (H).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will create no change in the state or department revenues or budget, nor the department's

workload. Insurers will not be required to file additional forms or rates and department fees will not be changed as a result.

❖ LOCAL GOVERNMENTS: This rule deals only with the relationship between the department and its licensees and as a result should have no impact on local governments.

❖ OTHER PERSONS: The increase in the advertising and entertainment amounts are optional. Producers can still spend less. These amounts have not been changed in at least seven years. Those agencies and producers who go with the higher dollar amounts will either need to take the additional expense from their earnings or increase rates to their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The increase in the advertising and entertainment amounts are optional. Producers can still spend less. These amounts have not been changed in at least seven years. Those agencies and producers who go with the higher dollar amounts will either need to take the additional expense from their earnings or increase rates to their consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The increase in advertising and entertainment expenses for title agencies and producers is not mandatory. The impact of these changes will depend on whether or not the licensee adopts the increases and to what extent. It is not a major change and is meant to keep up with inflation so licensees can maintain the same entertainment and advertising standards as in the past. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R590-153-6. Permitted Advertising and Business Entertainment.

A. A title insurer, agency or producer may furnish the following without charge, and without additions, addenda or attachments which

may be construed as reaching conclusions of the insurer, agency or producer regarding matters of marketable ownership or encumbrances:

- (1) A copy of an existing plat map; or
- (2) Tax information covering a specific parcel of real estate, for example, tax identification number, assessed owner, assessed value of land and improvements, or the latest tax amount; or
- (3) other information regarding real property which the county recorder's office provides to the public free of charge, or at a nominal charge, and in the exact format and content as provided by the county recorder's office.

B. Advertisements by title insurers, agencies or producers must comply with the following:

- (1) The advertisement must be purely self-promotional.
- (2) Advertisements may not be placed in a publication, including an Internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client except as allowed under R590-153-6 (B)(3).
- (3) Advertisements in official trade association publications are permissible as long as any title insurer, agency or producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title, insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than ~~[\$10]~~\$15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on the client's premises.

E. A title insurer, agency or producer may distribute self-promotional items having a value of ~~[\$3]~~\$5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

F. A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

- (1) The person representing the title insurer, agency or producer must be present during the business meal or business activity.
- (2) There is a substantial title insurance business discussion directly before, during or after the business meal or business activity.
- (3) The total cost of the business meal, the business activity, or both is not more than ~~[\$75]~~\$100 per person, per day.
- (4) No more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day.
- (5) The entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on the client's premises.

G. A title insurer, agency or producer may conduct educational programs under the following conditions:

- (1) The educational program shall address only title insurance, escrow or topics directly related thereto.
- (2) The educational program must be of at least one hour duration.

(3) For each hour of education ~~[\$10]~~\$15 or less per person may be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a client per calendar quarter.

H. A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of his/her immediate family with flowers or gifts not to exceed ~~[\$50]~~\$75.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: ~~May 13, 2004~~2007

Notice of Continuation: November 27, 2002

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

Insurance, Administration R590-240-5 Exemption Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30102

FILED: 06/15/2007, 10:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was recently put into effect. During the second comment period, additional suggested changes were proposed to clarify the exemption requirements of the rule. In order to not delay the rule further, the rule was put into effect and now these changes are proposed.

SUMMARY OF THE RULE OR CHANGE: The change to Subsection R590-240-5(1) clarifies that the student health program must have assets that are owned by a trust or trustees, in a fiduciary capacity. Subsection R590-240-5(3)(b) adds that the amount and type of assets to be used for claims must be approved by the insurance commissioner or as is required under Title 31A, Chapter 17.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-1-103 and 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the department or the state budget, nor will it affect the workload of the department. No additional filings will be required nor changes in the fees. It simply continues to allow the Commissioner to approve the amount and type of assets in the trust to be used in the payment of claims.

❖ **LOCAL GOVERNMENTS:** The changes will have no fiscal impact on local governments. They simply allow the

commissioner to continue to approve the amount and type of assets in the trust that are used in the payment of claims.

❖ **OTHER PERSONS:** The changes will allow the Commissioner to continue to approve the amount and type of assets used in the payment of claims by Student Health Programs. This is the same authority he has with other traditional insurance companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes will allow the Commissioner to continue to approve the amount and type of assets used in the payment of claims by Student Health Programs. This is the same authority he has with other traditional insurance companies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will help student health programs remain fiscally sound but will have no impact on other Utah businesses. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.

R590-240-5. Exemption Requirements.

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

- (1) A student health program must ~~be~~:
 - (a) ~~be~~ established by an institution;
 - (b) ~~have assets that are owned by~~ _____
 - (i) ~~owned by~~ an institution; ~~or~~
 - (ii) ~~owned by~~ a trust; or
 - (iii) ~~the trustees, in their fiduciary capacities,~~ of a trust established by an institution; and
 - (c) ~~be~~ operated by:
 - (i) an institution; or

(ii) the institution's authorized agent or affiliate.

(2) The primary purpose of the institution must be higher education, and not the providing of a student health program.

(3) Payment of covered claims of the student health program must be secured by adequate assets:

- (a) that are:
 - (i) secured by being:
 - (A) pledged;
 - (B) guaranteed;
 - (C) contributed;
 - (D) placed in trust; or
 - (E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and
 - (ii) secured under Subsection 5(3)(a)(i) by:
 - (A) the student health program;
 - (B) the institution that organizes, adopts, or establishes the student health program;
 - (C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);
 - (D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or
 - (E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and
- (b) (i) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; or
 - (ii) as approved by the commissioner by written order; and
- (c) under such terms and conditions as the commissioner determines by written order.

(4) The student health program may not be offered to or enroll anyone other than an eligible member.

(5) The student health program must have a comprehensive legal structure that demonstrates that:

- (a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;
- (b) the student health program will be administered by an experienced administrator; and
- (c) the student health program shall be administered according to contracts between:
 - (i)(A)(I) the student health program; or
 - (II) the institution; or
 - (III) both the student health program and the institution; and
- (B) the enrollees; and
- (ii)(A)(I) the student health program; or
- (II) the institution; or
- (III) both the student health program and the institution; and
- (B) health care providers.

(6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:

- (a) at a student health center; or
 - (b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.
- (7) Any supplemental health care services provided by the student health program must:
- (a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets under the conditions set forth in Subsection 5(3); or

(c) use a combination of Subsections 5(7)(a) and 5(7)(b).

(8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

(9) The student health program or the institution or both shall annually provide the department an informational copy of all current policies, booklets, and advertising.

(10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.

(11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

(12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

KEY: health insurance exemptions

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 31A-1-103; 31A-2-201



Insurance, Administration

R590-241

Rule to Recognize the Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 30082

FILED: 06/13/2007, 14:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with Section 31A-17-504 and R590-198-5.

SUMMARY OF THE RULE OR CHANGE: This rule recognizes, permits, and prescribes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with Sections 31A-17-504 and R590-198-5.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-17-402

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the department or the state's budget since it will only result in informational filings from those life insurers that elect to use the new table.

❖ **LOCAL GOVERNMENTS:** Since the rule deals only with the relationship between the department and its licensees, in this case life insurers that sell ordinary life insurance policies, local governments will not be affected.

❖ **OTHER PERSONS:** Because this rule does not mandate the new tables it will only affect those life insurers that elect to use them. For those insurers that use the tables, there will be a cost associated with the reporting requirement in the rule. However, the insurer will be able to hold lower reserves resulting in lower cost to the insurer and ultimately to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule does not mandate the new tables, it will only affect those life insurers that elect to use them. For those insurers that use the tables, there will be a cost associated with the reporting requirement in the rule. However, the insurer will be able to hold lower reserves resulting in lower cost to the insurer and ultimately to the consumer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Currently, there are 365 life insurers that might be affected by this rule. The Division expects mainly the larger insurers to elect to use the new tables provided by this rule. It is unknown how many will. Each insurer will be affected differently based upon their size and whether or not they are already collecting some or all of the data required for the report. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-241. Rule to Recognize the Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.****R590-241-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-17-402(1).

R590-241-2. Purpose and Scope.

(1) The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with Sections 31A-17-504 and R590-198-5.

(2) This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance business in this State.

R590-241-3. Definitions.

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002 and is supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection (2). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(a) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(b) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the Proceedings of the NAIC, 3rd Quarter 2006. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) The tables identified in Subsections R590-241-3(1) and R590-241-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

(4) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

R590-241-4. 2001 CSO Preferred Class Structure Table.

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation.

R590-241-5. Conditions.

(1) For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without

recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner or, at the direction of the commissioner, with the NAIC or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this rule. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

R590-241-6. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

KEY: life insurance mortality tables

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-17-402

◆ ————— ◆

Natural Resources, Geological Survey

R638-2

Renewable Energy Systems Tax Credits

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 30103

FILED: 06/15/2007, 11:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule lays out requirements and procedures for claiming renewable energy tax credits under Sections 59-7-614, 59-10-1014, and 59-10-1106.

SUMMARY OF THE RULE OR CHANGE: Renewable energy tax credits expired on 12/31/2006. However, S.B. 223 in the 2007 General Session the legislature reauthorized the old credits and expanded eligibility for credits to new technologies (biomass, geothermal, and ground source heat pumps) and created a new category of credits (production tax credits). A rule is therefore needed for these new provisions. Existing rules for the pre-2007 credits are due to expire in October 2007. This rule is being posted as a new rule because the existing rules are assigned to an office that no longer exists (the Office of Energy and Resource Planning at the Department of Natural Resources). Moreover, experience with the existing rule shows substantial shortcomings and a substantial rewriting has taken place. (DAR NOTE: S.B. 223

(2007) is found at Chapter 288, Laws of Utah 2007, and will be effective 01/01/2008.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-614, 59-10-1014, and 59-10-1106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Because S.B. 223 expanded eligibility for tax credits, additional cost is expected to implement the new statutes. However, some savings are expected because of new requirements in the rule (in comparison to the prior rules) that should require less work by Utah Geological Survey (UGS) staff to document eligibility for the credits.

❖ **LOCAL GOVERNMENTS:** There may be a slight increase in cost to local governments due to requirements in some sections of the rule for inspection of renewable energy systems by qualified electricians, plumbers, engineers, or code inspectors. Local governments may choose to inspect systems if requested by tax credit applicants but are not required to inspect systems under this rule. Any costs incurred by local government are voluntary.

❖ **OTHER PERSONS:** The prior rules required that renewable energy systems for which credits were sought comply with applicable building, plumbing, and/or electrical codes. However, there was no requirement to demonstrate this compliance. The new rule requires inspections or certifications for safety and reliability of most systems. For the majority of applicants who have systems installed by contractors, this will involve no extra cost. However, a small number of applicants for credits have historically been "do-it-yourselfers". For these applicants, there may be added cost in hiring a qualified professional to inspect and approve a system. This requirement is important to ensure that the state is not providing tax credits for systems that may be dangerous or unreliable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for the large majority of applicants will be minimal. Most applicants for the tax credits have systems installed by contractors who typically provide most of the information that is necessary for approval of the credits. A small additional new cost may be incurred in the requirement for photographs of systems. For those who self-install systems, there may also be an additional new cost for inspection of a system by a qualified professional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is little or no fiscal impact from this rule on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
GEOLOGICAL SURVEY
Room 3110
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Philip Powlick at the above address, by phone at 801-537-3365, by FAX at 801-537-4795, or by Internet E-mail at philippowlick@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 08/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2007

AUTHORIZED BY: Rick Allis, Director

R638. Natural Resources, Geological Survey.

R638-2. Renewable Energy Systems Tax Credits.

R638-2-1. Purpose.

(A) This rule implements the responsibilities assigned to the Utah Geological Survey (UGS) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for UGS certification of tax credit eligibility and tax credit amounts, and for UGS to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R638-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the UGS and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, UGS is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or production of energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the UGS may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, UGS may also establish rules defining the reasonable costs of a system.

R638-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point

of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point. This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the

commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32. This can include ground source heat pumps and water source heat pumps using ground water or surface water.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and
2. Sells all or some of its energy output or uses its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsection 59-7-614(2)(c) that provides 0.35 cents per kilowatt-hour

of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;
2. Biomass except for systems combusting biomass for heat;
3. Direct-use geothermal;
4. Geothermal electricity
5. Geothermal heat pump;
6. Hydroenergy;
7. Passive solar for heating or cooling;
8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Geological Survey, which is responsible for certifying tax credits specified under this rule.

(Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R638-2-4. Investment Tax Credit Certification Process.

(A) The Utah State Energy Program (USEP), a subdivision of the UGS, is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by USEP to gather information necessary to implement this rule.

(C) USEP will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, USEP reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, USEP may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, USEP finds that a renewable energy system is eligible for a residential or commercial tax credit, USEP will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only USEP may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of USEP's evaluation of an application, USEP will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;

2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or

3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;

2. The tax identification number or numbers of persons seeking a tax credit;

3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit USEP staff to locate the site for on-site verification of the information in the application.

4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H). Applications for a residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that SEP staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components,

the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow UGS to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R638-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of \$50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of \$2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end-use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) USEP may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R638-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R638-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a buildings conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems."

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at: <http://redc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>;

2. Collector tilt for fixed collectors shall be angled no greater than +/-15 degrees from the energy system site's geographic latitude;

3. Fixed collectors shall be oriented within 15 degrees of true south.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at: <http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult

pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at: <http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $(\$0.27 \times \text{rated output capacity in Btu/day}) - \text{rebates} \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $(\$0.27 \times \text{rated output capacity in Btu/day}) - \text{rebates} \times 0.10$

3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R638-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);
2. Inverter;
3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries;
2. Battery wiring;
3. Charge controllers; and

4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:

1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_pvmodules.cgi; or

2. The applicant can demonstrate to USEP that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:

1. They are also listed as eligible modules under the California Solar Initiative Program. A list of eligible inverters may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_inverters.cgi; or

2. The applicant can demonstrate to USEP that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems which will be considered to carry a cost \$2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at: <http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>);

3. Module and/or array tilt for fixed collectors shall be angled no greater than +/-15 degrees from the energy system site's geographic latitude;

4. Positioned such that fixed modules and/or arrays are oriented within 15 degrees of true south.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);
2. A Utah licensed solar photovoltaic contractor (S215);
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or
4. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$10 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$10 \times$ rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$10 \times$ rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$13 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$13 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$13 \times$ rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$13 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$13 \times$ rated output capacity in watts) - rebates) x 0.10

R638-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;
2. A heat-absorbing surface;

3. A thermal storage mass located within the conditioned space;

4. A heat transferral system or mechanism and;

5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;

2. Water wall;

3. Thermosyphon;

4. Equipment or building shell components providing direct heat gain; and

5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;

2. For a loaded structure, 50% of the cost may be eligible;

3. Notwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit calculated.

(G) No tax credit shall be given if USEP concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R638-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R638-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed as eligible under the California Emerging Renewables Program in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_smallwind.cgi; or

2. The applicant can demonstrate to USEP that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program as of calendar year 2007.

(C) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:

- a. Buildings;
- b. Utility poles or overhead utility lines;
- c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.

2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:

- a. Trees or other vegetation;
- b. Buildings and other structures;
- c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that SEP can verify appropriate siting. SEP also reserves the right to conduct a site visit to verify appropriate siting.

(F) Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

- 1. A professional electrician licensed by the State of Utah;
- 2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$5 per watt of rated output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

$\text{Tax credit granted} = ((\$5 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

$\text{Tax credit granted} = ((\$5 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.10$

R638-2-10. Investment Tax Credit , Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R638-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

- 1. A professional engineer licensed in Utah;
- 2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
- 3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a provisional well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a geothermal heat pump system is considered to be no higher than \$4,000 per ton of output capacity for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$4,000 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$4,000 \times$ rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$4,000 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$4,000 \times$ rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds \$4,000 per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

R638-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R638-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R638-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well

driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well right may be required on the tax credit application.

R638-2-13. Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R638-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R638-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;
2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;
3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
4. Engines or turbines used to power generators;
5. Generators;
6. Inverters;
7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(E) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R638-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to USEP for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other requirements of Section 59-7-614. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;
2. Wind energy systems; or
3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to USEP:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;

3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by USEP staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, USEP staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. USEP may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) USEP will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, USEP will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63, Chapter 46b (Administrative Procedures Act), upon its decision to grant or deny a certification request, USEP will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the

Utah State Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R638-2-16. Granting of Production Tax Credits.

(A) In order for a company to claim production tax credits on its Utah corporate income tax return, USEP must first validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to USEP information regarding the following:

1. The date that the commercial energy system first entered commercial service;

2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by USEP.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to USEP invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. USEP will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, USEP will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;

2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;

3. The number of kilowatts deemed to be validate;

4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) Once USEP has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either USEP or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63-46b-12 (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section 63-46b-13.

KEY: energy, renewable, tax credits, solar

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 59-7-614; 59-10-1014; 59-10-1106



Natural Resources, Parks and
Recreation
R651-201
Definitions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 30025
FILED: 06/04/2007, 07:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add more definitions commonly used, but not defined throughout the boating community of recreators. Items such as "good and serviceable condition", "immediately available", or "readily accessible" are now defined for those who boat on the waters of Utah.

SUMMARY OF THE RULE OR CHANGE: By adding new and more defined definitions, it will assist the public to understand more fully what is expected and what is meant by some of the boating terms used in Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Since these are definitions only, there will be no aggregate anticipated cost or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government, as these are definitions only and carry no monetary value or requirement.
- ❖ OTHER PERSONS: Defines how required equipment should be maintained and what it means to maintain all the boating equipment properly. The only possible cost would be if a boater replaced or repaired a personal flotation device (PFD) as defined in this section. That cost would be nominal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those replacing or updating their equipment would pay to have such equipment repaired or replaced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any fiscal impact should be negligible. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.
R651-201. Definitions.

R651-201-3. Good and Serviceable Condition.

(1) "Good and Serviceable condition" means any required equipment must be in proper operating condition; and

(a) Required labels and markings shall be intact and legible;

(b) Required equipment shall not be stored inside original packaging; and

(c) A PFD is considered to be in serviceable condition only if the following conditions are met:

(i) No PFD may exhibit deterioration that could diminish the performance of the PFD, including metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion; webbings or straps used to secure the PFD on the wearer that are ripped, torn or which have become separated from an attachment point on the PFD; or any other rotted or deteriorated structural component that fails when tugged.

(ii) In addition to meeting the requirements of paragraph (i) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material; buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which show evidence of fungus or mildew; or loss of buoyant material or buoyant material that is not securely held in position.

(iii) In addition to meeting the requirements of paragraph (i) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, except as provided in paragraph (iv) of this section; inflatable chambers that are all capable of holding air; oral inflation tubes that are not blocked, detached or broken; a manual inflation lanyard or lever that is not inaccessible, broken or missing; and, inflator status indicators that are not broken or otherwise non-functional.

(iv) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (i) and (iii) of this section.

R651-201-4. Immediately Available.

"Immediately available" means stored in plain and open view in the area where it will be used; not obstructed, blocked or covered in any way and capable of being quickly deployed.

R651-201-5. Readily Accessible.

"Readily Accessible" means easily located and retrieved without searching, delay or hindrance.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: ~~February 23, 1996~~ **August 7, 2007**

Notice of Continuation: April 18, 2006

Authorizing, and Implemented or Interpreted Law: 73-18

◆ ————— ◆

Natural Resources, Parks and Recreation

R651-206

Carrying Passengers for Hire

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30026

FILED: 06/04/2007, 07:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is established to move sections of other rules to be included in the proper area recognizing carrying passengers for hire, Rule R651-206. It also deletes certain text regarding operator permits; creates section identifying outfitting company responsibilities; reduces annual outfitting company to \$150, all others remain at \$200; adds reasons for revoking registration for outfitting companies that violate a resource protection regulation; and provides for limited reciprocity with out-of-state registered outfitting companies that operate on waters that cross over into Utah.

SUMMARY OF THE RULE OR CHANGE: The boating rules have experienced some major changes as far as where the sections are mentioned and this amendment puts them in better order for the recreating public to find. It clarifies the use of line in a throw bag, deletes the personal flotation device (PFD) requirements for carrying passengers for hire to include in Rule R651-206; and includes the river guide's responsibility for passengers to wear PFDs from Rule R651-215 to Rule R651-206. (DAR NOTE: The proposed amendment to Rule R651-215 is under DAR No. 30027 in this issue, July 1, 2007, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment deletes language and moves it into another rule to clarify the existing rule. There is no anticipated cost or savings to the state budget. The program should be self-funded with the inclusion of the lake/reservoir outfitting companies. It is under the State Boating Act and therefore will have no impact on other agencies, with perhaps the exception of several universities who provide boats and guides. If an agency does business as

an outfitting company, it would also affect its way of doing business.

❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government as this rule is being amended for clarification and incorporation into another rule where it will be understood more fully.

❖ OTHER PERSONS: All companies that provide guides and boats that carry passengers for hire will have to register with Utah State Parks and Recreation's Boating Program and pay a fee. The fee will be \$150 for in-state companies and \$200 for out-of-state companies. Most of these companies are doing an ongoing maintenance and inspection program, but those that are not, would have to comply and bring their boats up to the basic standards required by the State Boating Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All companies that provide guides and boats that carry passengers for hire will have to register with Utah State Parks and Recreation's Boating Program and pay a fee. The fee will be \$150 for in-state companies and \$200 for out-of-state companies. Most of these companies are doing an ongoing maintenance and inspection program, but those that are not, would have to comply and bring their boats up to the basic standards required by the State Boating Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment is similar to current practice. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.**R651-206. Carrying Passengers for Hire.****~~R651-206-1. Vessel Operator Permit.~~**

~~(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original First Aid Card or certificate and a current and original CPR card or certificate.~~

—(a) The first aid card or certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course or an equivalent course from a reputable provider.

—(b) The CPR card or certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR course, or an equivalent course from a reputable provider who teaches in accordance with the Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

—(c) First aid and CPR cards or certificates must include the following information: name or title of the course; course provider and contact information; length of certification; name and signature of person certified; and signature of the course instructor.

—(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

—(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a \$60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7 day waiting period and a \$15 retest fee per attempt.

—(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

—(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a \$45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

—(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

—(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a \$25 fee. An application for a duplicate permit must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

—(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

—(9) A Utah Vessel Operator Permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

—(a) the permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

—(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

—(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

—(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

—(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

—(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell, or a Vessel Operator Permit if leading persons for hire.]

R651-206-1. Definitions.

—(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

—(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

—(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

—(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For float trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

—(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

—(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

—(5) "CFR" means U.S. Code of Federal Regulations.

—(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

—(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For float trip vessels, the annual dockside inspection may be performed at the company's place of business.

—(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

—(9) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

—(10) "License" means a Utah Captain's/Guide's License or a U.S. Coast Guard Master's License.

—(11) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak, or similar vessel).

—(12) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

—(13) "Other rivers" means all rivers or river sections in Utah not defined in Subsection (18) of this rule as a whitewater river.

—(14) "Permit" means a Utah Boat Crew Permit.

—(15) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(16) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire.

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(17) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(18) "Whitewater river" means the following river sections: the Green and Yampa Rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other Division recognized whitewater rivers in other states.

(19) "Float trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A float trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

[R651-206-2. River Guide Permit.

(1) As used in this rule: "Guide Permit" means a valid Guide 1, 2, 3 or 4 permit issued by the division for carrying or leading passengers for hire. The Guide Permit must be accompanied by a current and appropriate level first aid card or certificate and a current CPR card or certificate. A photocopy of both sides of the first aid and CPR cards or certificates is allowed for river guides when boating on rivers.

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the whitewater river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) First Aid and CPR Course Requirements for Guide Permits:

(i) For Guide 1 and 2 Permits, the first aid card or certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider who teaches in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) For Guide 3 and 4 Permits, the first aid card or certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(iii) The CPR card or certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR course, or an equivalent course from a reputable provider who teaches in accordance with the

Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

(iv) First aid and CPR cards or certificates must include the following information: name or title of the course; course provider and contact information; length of certification; name and signature of the person certified; and signature of the course instructor.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel).

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "Whitewater river" means the following river sections: the Green and Yampa rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other division recognized whitewater rivers in other states.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder, there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7 day waiting period and a \$15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a \$30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7 day waiting period and a \$15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a \$20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a \$30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original

permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be \$15 for a Guide 1 or 2 permit, and \$15 for a Guide 3 or 4 permit.

- (11) All boatman permits issued by the division are expired.
- (12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.
- (13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.
- (14) A guide permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:
 - (a) the guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;
 - (b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;
 - (c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three year period;
 - (d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or
 - (e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.
- (15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a \$200 fee.
- (16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.
- (17) An outfitting company's division registration may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:
 - (a) the outfitting company's or agent's negligence caused personal injury or death as determined by due process of the law;
 - (b) the outfitting company or agent is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a calendar year period;
 - (c) false or fictitious statements were certified or false qualifications were used to qualify a person to obtain a guide permit for an employee or others;
 - (d) the division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the division;
 - (e) an outfitting company has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation; or
 - (f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.]

R651-206-2. Outfitting Company Responsibilities.

- (1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation.
 - (a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:
 - (i) Evidence of a current and valid business license;
 - (ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;
 - (iii) Evidence of general liability insurance coverage; and
 - (iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or
 - (v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.
 - (2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.
 - (3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:
 - (a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;
 - (b) Obtained the appropriate first aid and CPR certificates; and
 - (c) Completed the prescribed application form with true and correct identifying information.
 - (4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:
 - (a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;
 - (b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;
 - (c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;
 - (d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;
 - (e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;
 - (f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or
 - (g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.
 - (5) An outfitting company shall have a written policy describing a program for a drug free workplace.
 - (6) An outfitting company shall maintain a training log for each of its vessel operators.
 - (7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of \$1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip operation logs;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will

be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in person at a Division designated location.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

(i) Lake and Reservoir Captain (LCG)

(ii) Tow Vessel Captain (TCG)

(iii) Whitewater River Guide (WCG)

(iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done, in person, at a Division designated location.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

(i) Lake and Reservoir Crew (LRC)

(ii) Tow Vessel Crew (TVC)

(iii) Whitewater River Crew (WRC)

(iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The first aid certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is \$15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License or Utah Boat Crew Permit as required by this section.

R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs a being stowed on the vessel, the PFDs shall be stowed in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, hard-hulled kayak or white water canoe operators or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, for hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) Float trip vessels are only required to carry a map of the water body.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee. The registration of a person or entity towing for hire will be required beginning January 1, 2008.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard

Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be a minimum of \$1,000,000 per incident.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one license holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

(v) A jump starting system;

(vi) A tool kit and spare items for repairs on assisting vessel; and

(vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel

Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the Float Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

KEY: boating, parks

Date of Enactment or last Substantive Amendment: ~~January 15, 2005~~ August 7, 2007

Notice of Continuation: February 13, 2006

Authorizing, and Implemented or Interpreted Law: 73-18



Natural Resources, Parks and Recreation

R651-215

Personal Flotation Devices

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30027

FILED: 06/04/2007, 07:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment moves information to Rule R651-206 where it more aptly belongs; makes changes to personal flotation devices (PFD) requirements; and deletes river guide's responsibility for passengers to wear PFDs and moves it to Rule R651-206 where it should be listed. (DAR NOTE: The proposed amendment to Rule R651-206 is under DAR No. 30026 in this issue, July 1, 2007, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The boating rules will be changed a great deal and with this amendment many of the items that were listed on PFD requirements actually belong in Rule R651-206. This amendment carries out that purpose.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget, as these are just language changes being moved to other sections or rules.
- ❖ LOCAL GOVERNMENTS: Certain language is being deleted and moved to another rule, thereby clarifying that language in the area where it better belongs. There is no anticipated cost or savings to the local government.
- ❖ OTHER PERSONS: This amendment is language changes only. There is no anticipated cost or savings to other persons since this is not a monetary issue.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None anticipated as this moves language from this rule to Rule R651-206.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Insignificant impact. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.

R651-215. Personal Flotation Devices.

~~R651-215-8. Carrying Passengers for Hire PFD Requirements on Rivers.~~

~~—(1) On rivers, if carrying passengers for hire, Type I PFDs are required. Type I PFDs or Type V PFDs used in lieu of the Type I PFD must be listed for commercial use on the label.~~

~~—(2) The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.~~

~~—(3) Hard hulled kayak or white water canoe operators or a working river guide may wear a Type III PFD in lieu of the Type I PFD.~~

[R651-215-[9]8. River Throw Bag in Lieu of Type IV PFD.

On ~~[rivers,]~~ a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

~~R651-215-10. Carrying Passengers for Hire PFD Requirements on Lakes and Reservoirs.~~

~~—(1) When carrying passengers for hire, Type I PFDs are required. Type I PFDs, or Type V PFDs used in lieu of the Type I PFD, must be listed for commercial use on the label.~~

~~—(2) The required Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.~~

~~—(3) For all hard hulled kayak or sea kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.~~

[R651-215-[44]9. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft or a sailboard shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12. ~~[When carrying passengers for hire, the river guide is responsible for the passengers on his vessel to be in compliance with this Subsection.]~~

R651-215-[42]10. River Flat Water Areas.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-[43]11. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating, parks**Date of Enactment or Last Substantive Amendment:** [~~January 15, 2005~~ **August 7, 2007**]**Notice of Continuation:** February 13, 2006**Authorizing, and Implemented or Interpreted Law:** 73-18

Natural Resources, Parks and
Recreation
R651-217
Fire Extinguishers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30028

FILED: 06/04/2007, 07:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to clarify the accessibility of approved fire extinguishers on all motorboats; and to add specific instructions regarding certifying, recharging, and servicing a fire extinguisher. The new Sections R651-217-6 R651-217-7 explain what are disposable fire extinguishers, and how to determine if they are disposable.

SUMMARY OF THE RULE OR CHANGE: Updating the processes for using fire extinguishers is a very important part of any boating recreator. This change is designed to help all boaters know processes and definitions regarding having, storing, disposing, recharging, certifying, and servicing their fire extinguishers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The rule amendment will require all vessels (including state vessels) to carry extinguishers that comply with minimal recharging and replacing guidelines. The only charges would be for fire extinguishers to be recharged every 5 years or replacement every 12 years.
- ❖ LOCAL GOVERNMENTS: The same goes for local government vessels. The only cost would be every 5 years for recharging and every 12 years for replacement.
- ❖ OTHER PERSONS: Those having their fire extinguishers charged every 5 years or replaced every 12 years would bear the cost for those services or products. The average replacement cost and recharging cost would be approximately \$20 for the vessel owners.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The average replacement cost and recharging cost would be approximately \$20 for the vessel owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will help businesses who sell fire extinguishers. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.**R651-217. Fire Extinguishers.****R651-217-1. Fire Extinguishers On Motorboats.**

All motorboats, unless exempt, must have on board ~~the~~ a readily accessible and approved fire extinguisher as specified in Section R651-217-2.

R651-217-6. Certifying, Recharging, or Servicing a Fire Extinguisher.

Each fire extinguisher, except a disposable fire extinguisher, must show evidence of being certified, recharged, or serviced once every five years, or a current standard as described in the National Fire Protection Agency - Publication 10, by a qualified fire fighting equipment repair service.

R651-217-7. Disposable Fire Extinguishers.

(1) If a fire extinguisher is unable to be certified, recharged or serviced by a qualified fire fighting equipment repair service, it is considered disposable.

(2) The serviceability of a disposable fire extinguisher expires upon being discharged, loss of pressure or charge, or 12 years from the date of manufacture printed on the label or imprinted on the bottom of the fire extinguisher.

KEY: boating, parks**Date of Enactment or Last Substantive Amendment:** [~~1987~~ **August 7, 2007**]**Notice of Continuation:** April 18, 2006**Authorizing, and Implemented or Interpreted Law:** 73-18-8(4)

**Natural Resources, Parks and
Recreation
R651-219-5
Equipment Good and Serviceable**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 30029
FILED: 06/04/2007, 07:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment identifies more conditions when safety equipment is required and readily accessible, unless required to be "immediately" available.

SUMMARY OF THE RULE OR CHANGE: Additional safety equipment is required to be in good and serviceable condition, and this rule amendment goes one step further by requiring that the same equipment to be "readily available" unless there is a requirement for such equipment to be "immediately available".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Since this is a safety requirement, there would be no anticipated cost or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a boating requirement and deals directly with state issues. There are no anticipated cost or savings to local government.
- ❖ **OTHER PERSONS:** There is no anticipated cost or savings to other persons, other than compliance to the accessibility of safety equipment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment requires equipment to be readily accessible, but does not require any additional equipment, and therefore, there is no compliance cost estimated to vessel owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

**R651. Natural Resources, Parks and Recreation.
R651-219. Additional Safety Equipment.
R651-219-5. Equipment Good and Serviceable.**

All required safety equipment shall be in good and serviceable condition, and readily accessible, unless required to be immediately available.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: ~~August 15, 2002~~ August 7, 2007

Notice of Continuation: April 18, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-8(6)

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**Natural Resources, Parks and
Recreation**

**R651-221-1
Boat Livery Agreements**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 30030
FILED: 06/04/2007, 07:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the name "Livery Agreement" to make it "Liveries - Boat Rental Companies", and re-define what boat livery responsibilities are, for a clear understanding.

SUMMARY OF THE RULE OR CHANGE: This amendment reorganizes and clarifies the text of the current rule; adds requirement for boat livery with the Division annually and payment of a fee; establishes an implementation date for annual boat livery registration to begin 01/01/2008; requires that the name of the boat livery be displayed on the vessels in its fleet; and includes an "equipment timeshare" in the definition of a "boat livery".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** A database for boat livery registration will need to be developed. Other costs will be incurred with processing the registration fees. However, the registration fee is anticipated to cover the administrative and educational

costs, so there will be no anticipated cost of savings to the state budget that can be measured at this time.

❖ LOCAL GOVERNMENTS: This program is administered through the State Boating Program and there will be no aggregate anticipated cost or savings to local government.

❖ OTHER PERSONS: This program will be under the State Boating Program and all boat liveries and rental companies will need to register and pay a fee ranging from \$50 to \$100 per year depending on number of vessels for rent. There would be some cost incurred for each rental company to display the company name on each rental vessel. This will also affect several universities and military installations that have equipment rentals that include boats.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All boat liveries and rental companies will need to register and pay a fee ranging from \$50 to \$100 per year depending on number of vessels for rent. There would be some cost incurred for each rental company to display the company name on each rental vessel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on businesses. Michael Styler, Executive Director

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.

R651-221. Boat ~~[Livery Agreements]~~ Liveries - Boat Rental Companies.

~~[R651-221-1. Boat Livery Agreements.~~

~~The owner of a boat livery or his representative shall provide a copy of the lease or rental agreement, to an authorized agent of the Division, signed by the owner or his representative and by the person leasing or renting the vessel. The lease or rental agreement shall contain the following information and be carried on board the vessel: the vessel's assigned number; the period of time for which the vessel is leased or rented; and a check-off list of the required safety equipment. The registration card may be retained on shore by the boat livery.~~

R651-221-1. Boat Livery Responsibilities.

(1) Each boat livery shall register with the Division annually and pay the appropriate fee, prior to the commencement of the operation.

(a) The annual boat livery registration requires the following:

(i) The completion of the prescribed application form;

(ii) Evidence of a valid business license; and

(iii) Payment of the prescribed fee.

(b) The annual boat livery registration fee shall be:

(i) \$50 for boat liveries with up to 25 vessels in its fleet;

(ii) \$75 for boat liveries with up to 50 vessels in its fleet;

(iii) \$100 for boat liveries with more than 50 vessels in its fleet.

(c) A boat livery that is registered with the Division as an outfitting company shall not pay the boat livery registration fee.

(d) The annual boat livery registration will be required beginning January 1, 2008.

(2) The name of the boat livery shall be displayed on the outward superstructure of each vessel in the boat livery's fleet. If another governmental agency prohibits the display of a livery's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(3) A boat livery shall produce a lease or rental agreement for each vessel leased or rented from its fleet.

(a) The lease or rental agreement shall be signed by the owner of the livery or his representative and by the person leasing or renting the vessel.

(b) A copy of the lease or rental agreement shall be carried on board the vessel and shall contain the following information:

(i) The name of the person leasing or renting the vessel;

(ii) The vessel's assigned bow number, hull identification number, or other number if the vessel is not powered by a motor or sail;

(iii) A description of the vessel's make, model, color and length;

(iv) The period of time for which the vessel is leased or rented; and

(v) A check-off list of the required safety equipment provided on the vessel.

(c) For non-motorized vessels rented or leased in a group, one rental agreement is required and shall be carried on board one of the vessels by the person who rented or leased the vessels or the designated group leader.

(4) Upon request of an agent of the Division, the owner of a boat livery or his representative shall provide the Division with a copy of a lease or rental agreement.

(5) The certificate of registration for a leased or rented vessel may be retained on shore by the boat livery.

(6) A recreational "equipment timeshare" business which leases or rents vessels for consideration is a boat livery.

(7) A boat livery shall have each vessel in its fleet that is equipped with a 50 hp or greater motor covered with liability insurance as required in UCA 73-18c-101 through 308, and UCA 31A-22-1501 through 1504.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: [August 15, 2002] August 7, 2007

Notice of Continuation: April 18, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-10(2)

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Natural Resources, Wildlife Resources

R657-5

Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30063

FILED: 06/12/2007, 21:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining big game permits it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a sportsman to purchase a hunting or combination license prior to applying for or obtaining big game permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining any big game permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsman. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for

residents and nonresidents wishing to hunt big game in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting big game.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule have a potential to create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ~~five~~ten

dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) a person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

~~(2)~~(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

~~(2)~~~~3~~ Applications are available from license agents, division offices, and through the division's Internet address.

~~(3)~~~~4~~ A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

~~(4)~~~~5~~ A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

~~(5)~~~~6~~ A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

~~(6)~~~~7~~ A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

~~(7)~~~~8~~(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

~~(8)~~~~9~~(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

~~(9)~~10 Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

~~(10)~~11 Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).

(12) To apply for a resident permit, a person must be a resident at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;
(b) a nonrefundable handling fee for one of the following permits:

- (i) buck deer;
- (ii) bull elk; or
- (iii) buck pronghorn; and

(c) the nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the nonrefundable handling fee, if applying only for a bonus point; and

(e) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the nonrefundable handling fee; or

(b) the nonrefundable handling fee per species, if applying only for a preference point; and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing with a check or money order will receive a permit refund in May.

(2)(a) Unsuccessful applicants who applied in the big game drawing with a credit or debit card will not be charged for a permit.

(b) Unsuccessful applicants who applied as a group will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees and Utah hunting or combination license fees are nonrefundable.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; ~~and~~

(b) a nonrefundable handling fee; and

(c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 calendar days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

KEY: wildlife, game laws, big game seasons

Date of Enactment or Last Substantive Amendment: ~~April 9~~August 7, 2007

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6



Natural Resources, Wildlife Resources

R657-6

Taking Upland Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30064

FILED: 06/12/2007, 21:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the upland game program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) change the name of the small game license to a hunting license pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; and 2) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This amendment changes the name of a small game license to a hunting license pursuant to S.B. 161. The proposed changes to the rule do not create a cost or savings impact to the state budget or the Division of Wildlife Resource's budget.

❖ **LOCAL GOVERNMENTS:** None--This amendment changes the name of the small game license to a hunting license. The proposed change does not create any direct cost or savings impact to local governments because they are not directly affected by the rule.

❖ **OTHER PERSONS:** None--This amendment changes the name of a small game license to a hunting license. This small change does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment changes the name of a small game license to a hunting license pursuant to S.B. 161. The proposed change to the rule does not create additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-6. Taking Upland Game.

R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation of the Wildlife Board for taking upland game.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the proclamation of the Wildlife Board for taking upland game to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to ~~[provide their small game]~~ possess a hunting or combination license with the HIP registration number recorded ~~[showing]~~ on the license, demonstrating they have registered and provided information for the HIP program.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications will be available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Late applications, received by the date published in the proclamation of the Wildlife Board for taking upland game, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the proclamation of the Wildlife Board for taking upland game, shall not be processed and shall be returned to the applicant.

(4) Group applications for Sandhill Crane will not be accepted.

(5)(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.

(6) Each application must include:

(a) a [~~\$5~~] nonrefundable handling fee; and

(b) the [~~small game license~~] hunting or combination license fee, if it has not yet been purchased.

(7) A [~~small game license~~] hunting or combination license may be purchased before applying, or the [~~small game license~~] hunting or combination license will be issued upon [~~successfully~~] successful drawing [~~a permit~~] results. Fees must be submitted with the application.

(8) The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(9) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(10) To apply for a resident permit or license, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

(12)(a) An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the Sandhill Crane Drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(13)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual [~~small game~~] hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits, game laws

Date of Enactment or Last Substantive Change: [~~August 8, 2006~~] **August 7, 2007**

Notice of Continuation: July 8, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources **R657-9** Taking Waterfowl, Common Snipe and Coot

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30065

FILED: 06/12/2007, 21:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's waterfowl program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) change the name of the small game license to a hunting license pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; and 2) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This amendment changes the name of a small game license to a hunting license pursuant to S.B. 161. The proposed changes to the rule do not create a cost or savings impact to the state budget or the Division of Wildlife Resource's budget.

❖ **LOCAL GOVERNMENTS:** None--This amendment changes the name of the small game license to a hunting license. The proposed change does not create any direct cost or savings impact to local governments because they are not directly affected by the rule.

❖ OTHER PERSONS: None--This amendment changes the name of a small game license to a hunting license. This small change does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment changes the name of a small game license to a hunting license pursuant to S.B. 161. The proposed change to the rule does not create additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-9. Taking Waterfowl, Common Snipe and Coot.

R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available from license agents, division offices, and through the division's Internet address. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees submitted with the application shall be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be processed and will be returned.

(4) A person may obtain only one swan permit each year

(5) A person may not apply more than once annually.

(6) Group applications are not accepted.

(7) A ~~small game~~ Utah hunting or combination license may be purchased before applying, or the ~~small game~~ hunting or combination license will be issued to the applicant upon successfully drawing a permit.

(8) Each application must include:

(a) a nonrefundable handling fee; and

(b) the ~~small game~~ Utah hunting or combination license fee, if the license has not yet been purchased.

R657-9-5. Drawing.

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling [~~fees~~]fee will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-9-8. Purchase of License by Mail.

(1) A person may purchase a hunting or combination license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-34. Falconry.

(1) Falconers must obtain a valid [~~small game~~]hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

KEY: wildlife, birds, migratory birds, waterfowl
Date of Enactment or Last Substantive Amendment: [~~October 24, 2006~~]August 7, 2007
Notice of Continuation: August 21, 2006
Authorizing, and Implemented or Interpreted Law: 23-14-19; 23-14-18; 50 CFR part 20



Natural Resources, Wildlife Resources
R657-10
 Taking Cougar

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE No.: 30066
 FILED: 06/12/2007, 21:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's cougar program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a cougar permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining cougar permits it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a sportsman to purchase a hunting or combination license prior to applying for or obtaining cougar permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining any cougar permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsmen. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents wishing to hunt big game in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting big game.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-10. Taking Cougar.

R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Purchase of Permit by Mail.

(1) A person may obtain a cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter

education certification, ~~and~~ proof of valid hunting or combination license or the corresponding fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-25. Cougar Pursuit.

(1) Cougar may be pursued only by persons who have obtained a valid cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

(6) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. General Application Information.

(1) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(2) A person may not apply for or obtain more than one cougar permit for the same year.

~~(2)~~ Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

R657-10-28. Application Procedure.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar

will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

- (i) future pre-printed applications;
 - (ii) notification by mail of late application and other draw opportunities; and
 - (iii) re-evaluation of Division or third-party errors.
- (b) The handling fee will be used to process the late application. Any Utah hunting or combination license fee submitted with the application will not be refunded and the license will be issued. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-30.

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-10-29. Fees.

- (1) Each application must include:
 - (a) the permit fee; ~~and~~
 - (b) the nonrefundable handling fee; and
 - (c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.
- (2) Permits are mailed to successful applicants.
- (3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.
- (b) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.
- (c) The handling fees and Utah hunting or combination license fee are nonrefundable.

R657-10-30. Drawing and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar. The drawing results will be posted on the division's Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits.

(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Limited entry permits remaining after the drawing may be obtained on a first-come, first-served basis as provided in the proclamation of the Wildlife Board for taking cougar.

(6) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(7)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) Handling fees and Utah hunting or combination license fees will not be refunded.

(8)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-10-31. Bonus Points.

- (1) A bonus point is awarded for:
 - (a) a valid unsuccessful application when applying for a limited entry permit in the cougar drawing; or
 - (b) a valid application when applying for a bonus point in the cougar drawing.
- (2) bonus points are awarded only to applicants eligible to receive a limited entry cougar permit and consistent with subsection (1).
- (3) The purchase of a harvest objective permit will not affect bonus points.

~~(3)~~(4)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

~~(4)~~5(a) Each applicant receives a random drawing number for:

- (i) the current valid limited entry cougar application; and
- (ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

~~(5)~~6(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(~~6~~7) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).

(~~7~~8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit; or

(b) a person obtains a harvest objective cougar permit.

(~~8~~9) Bonus points are not transferable.

(~~9~~10) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-10-33. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-35. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing[~~and flagrant~~], intentional or reckless violation for purposes of permit suspension.

R657-10-37. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more than 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

KEY: wildlife, cougar, game laws

Date of Enactment or Last Substantive Amendment: ~~October 24, 2006~~ **August 7, 2007**

Notice of Continuation: August 21, 2006

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources **R657-13** Taking Fish and Crayfish

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 30067

FILED: 06/12/2007, 21:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require a person 12 years of age or older to obtain a fishing license pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; and 2) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment reduces the age requirement for purchasing a fishing license. Since this amendment requires a younger angler to purchase a license,

it has the potential to expand the number of licenses issued. However, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: Since this amendment reduces the age requirement for purchasing a fishing license, it has the potential to increase the amount of anglers traveling to and purchasing products from local businesses. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment reduces the age requirement for purchasing a fishing license. Since this amendment requires a younger angler to purchase a license, it has the potential to expand the number of licenses. This may expand the number of people purchasing licenses/goods and services at license agents. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for young anglers who decide to participate in fishing in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in fishing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, the second Saturday of June, annually. All other laws and rules apply.

(2) A person [~~14~~]12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under [~~14~~]12 years of age may fish without a license and take a full bag and possession limit.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering \$500 or more in prizes.

(b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if:

(i) contestants are limited to persons [~~13~~]11 years of age or younger; and

(ii) less than \$500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers \$500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests as provided in Subsection (1)(a) must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-7. Fishing With a Second Pole.

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit [~~in any one day~~].

(3) Anglers under [~~14~~]12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under [~~14~~]12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [~~December 12, 2006~~]August 7, 2007

Notice of Continuation: September 20, 2002

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3



Natural Resources, Wildlife Resources **R657-17** Lifetime Hunting and Fishing License

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30068

FILED: 06/12/2007, 21:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's big game program, which directly affects the Lifetime Hunting and Fishing License program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) change the name of the small game license to a hunting license pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) require a person 12 years of age or older to obtain a fishing license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-17.5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The reason for this rule amendment was to maintain consistency between the rule and S.B. 161 so the amendment does not create a cost or savings impact to the state budget or the Division of Wildlife Resource's (DWR) budget. Although there may be some additional programming costs the amendments will not create any cost or savings impact to the state budget or DWR's budget. Any additional work will be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment simply addresses a change in the name of the small game license and age restrictions on fishing, this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: Since Lifetime Licenses are no longer available for purchase, DWR determines that this amendment does not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments simply address a name change and a lower age restriction on fishing. However, since Lifetime Licenses are no longer available for purchase and the current Lifetime License holders are older than the age requirements, DWR determines that there are no additional compliance costs for affected persons associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-17. Lifetime Hunting and Fishing License.

R657-17-1. Purpose and Authority.

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for special hunting and fishing permits and tags.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-3. Lifetime License Entitlement.

(1)(a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual ~~[small game]~~ hunting, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) Each year, a lifetime licensee who is eligible to hunt big game may receive without charge, a permit and tag for the region of their choice for one of the following general deer hunts:

- (i) archery buck deer;
- (ii) any weapon buck deer; or
- (iii) muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

(6)(a) Lifetime license holders may participate in the Dedicated Hunter Program.

(b) Upon entering the Dedicated Hunter Program, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5 during enrollment in the Dedicated Hunter Program.

(7)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during the year the general any weapon buck deer and bull elk combination permit is valid.

R657-17-6. Hunter Education Requirements -- Minimum Age for Hunting.

(1) The division shall issue a lifetime licensee only those licenses, permits, and tags for which that person qualifies according to the hunter education requirements, age restrictions specified in this Section and Title 23, Wildlife Resources Code of Utah, and suspension orders of a division hearing officer.

(2)(a) Lifetime licensees born after December 31, 1965, must be certified under Section 23-19-11 to engage in hunting.

(b) Proof of hunter education must be provided to the division by the lifetime licensee.

(3) Age requirements to engage in hunting are as follows:

(a) A lifetime licensee must have completed a valid hunters education course to hunt.

~~_____~~ (b) A lifetime licensee must be 12 years of age or older to hunt ~~[small]~~ big game.

~~_____~~ (b) A lifetime licensee must be 14 years of age or older to hunt big game. A lifetime licensee 13 years of age may hunt big game if that person's 14th birthday falls within the calendar year.

KEY: wildlife, game laws, hunting and fishing licenses

Date of Enactment or Last Substantive Change: ~~February 7~~ August 7, 2007

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-19-17.5; 23-19-40; 23-19-11

◆ ————— ◆

Natural Resources, Wildlife Resources
R657-18
 Wood Products on Division of Wildlife
 Resources Lands

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 30083
 FILED: 06/14/2007, 07:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the Use of Division Lands rule.

SUMMARY OF THE RULE OR CHANGE: This rulemaking action repeals Rule R657-18 and combines the text with Rule R657-28 to aid in simplifying the rules. This rule is repealed in its entirety. (DAR NOTE: The proposed amendment of Rule R657-28 is under DAR No. 30084 in this issue, July 1, 2007, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-8

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This repeal combines the text from Rule R657-18 with Rule R657-28 to aid in simplifying the rules that govern public lands. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: These amendments provide procedures and restrictions for the use of DWR's lands. Therefore, these amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments provide procedures and restrictions for the use of DWR's lands. Therefore, these amendments do not impose any additional costs on other persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE

SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Staci Coons at the above address, by phone at 801-538-4718,
 by FAX at 801-538-4709, or by Internet E-mail at
 stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY
 SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER
 THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

~~**R657-18. Wood Products on Division of Wildlife Resources Lands.**~~

~~**R657-18-1. Purpose and Authority.**~~

~~Under authority of Section 23-14-8, this rule provides for the use of wood products on division lands.~~

~~**R657-18-2. Definitions.**~~

~~(1) Terms used in this rule are defined in Section 23-13-2.~~

~~(2) In addition:~~

~~(a) "Christmas tree" means any pinyon or juniper tree or part thereof cut and removed from the place where it was grown, without the foliage being removed.~~

~~(b) "Cord" means a unit of wood cut for firewood equal to a stack 4x4x8 feet or 128 cubic feet.~~

~~(c) "Firewood" means any portion of a tree not included in any other definition of this section.~~

~~(d) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.~~

~~(e) "Permit" for the purpose of this rule only means a document granting authority to take, transport, and possess wood products.~~

~~(f) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.~~

~~(g) "Wood product" means any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.~~

~~**R657-18-3. General Restrictions.**~~

~~(1) A person may not cut or remove any wood product from division lands without first having obtained the proper permit, tag, or contract and having the permit, tag, or contract in possession.~~

~~(2) A contract or permit may be issued in a designated area for:~~

~~(a) removing trees;~~

~~(b) harvesting Christmas trees; or~~

~~(c) collecting firewood, posts, or ornamentals.~~

~~(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.~~

~~(4) Permits are nontransferable and nonrefundable.~~

~~—(5) Permittees must accompany wood products from the cutting site.~~

~~—(6) Permits are available at the Salt Lake and regional offices.~~

R657-18-4. Firewood Permits.

~~—(1) A person may purchase one permit per year to take firewood on division lands.~~

~~—(2) A firewood permit allows a person to take up to 2 cords of wood under the following conditions:~~

~~—(a) Firewood collection is limited to felled trees on chained areas, except in designated live tree removal areas.~~

~~—(b) A living or dead tree containing a nesting cavity may not be felled or taken.~~

~~—(3) Firewood may be collected from May 1 through December 31.~~

R657-18-5. Christmas Tree Permits.

~~—(1) A person may purchase one permit per year to take a Christmas tree on division lands.~~

~~—(2) A tag will be issued with each Christmas tree permit.~~

~~—(3) Only pinyon pine or Utah juniper may be cut and removed.~~

~~—(4) The tag must be visibly attached to the tree before it is transported from the cutting site.~~

~~—(5) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.~~

R657-18-6. Ornamentals and Posts.

~~—(1) A person may purchase one permit per year to cut and remove ornamentals or posts on division lands.~~

~~—(2) A person may harvest ornamentals up to an aggregate value of \$60 per permit.~~

~~—(3) The following values are assigned to ornamentals and posts:~~

~~—(a) Conifers, \$5 per tree;~~

~~—(b) Deciduous, \$3 per tree; and~~

~~—(4)(a) A person may harvest posts up to an aggregate value of \$50 per permit.~~

~~—(b) Posts of any size are valued at \$0.40 per post.~~

R657-18-7. Contract Agreements.

~~—(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.~~

~~—(2) Contracts shall be awarded through a bid process.~~

KEY: wildlife, wood

Date of Enactment or Last Substantive Change: 1993

Notice of Continuation: June 20, 2002

Authorizing, and Implemented or Interpreted Law: 23-14-8]

◆ ————— ◆

Natural Resources, Wildlife Resources

R657-26

Adjudicative Proceedings for a License, Permit, or Certificate of Registration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30077

FILED: 06/12/2007, 22:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to align with the criteria set forth in H.B. 48 of the 2007 Utah State Legislative Session regarding how adjudicative procedures regarding suspension of privileges to harvest protected wildlife in the state of Utah are conducted. (DAR NOTE: H.B. 48 (2007) is found at Chapter 136, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) define "Single Criminal Episode"; 2) change hearing officer to presiding officer; 3) alter the suspension sentences a presiding officer may issue; 4) provide an alternate hunting license for those suspended for small game to allow them to apply for or obtain big game, cougar, and bear permits; and 5) make technical corrections for consistency and accuracy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 23-19-9(15)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule is being amended to clarify "Single Criminal Episode" and to grant latitude to the presiding officer in addressing suspension sentences. The Division of Wildlife Resources (DWR) determines that this amendment will not create any cost or savings impact to the state budget or DWR's budget since they will not increase workload and can be done with existing budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: No impact--These amendments do not impose any requirements on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments simply address the suspension sentences a presiding officer may issue. It also aligns the rule with H.B. 48. Therefore, this rule does not impose any cost requirements for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY UT 84116-3154, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.****R657-26-1. Purpose and Authority.**

Under authority of Subsection 23-19-9(~~14~~14), this rule provides the procedures and standards for:

- (1) the suspension of the privilege of applying for, purchasing and exercising the benefits conferred by a license or permit; and
- (2) the suspension of a certificate of registration.

R657-26-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Intentionally" as defined in Section 76-2-103.
 - (b) "Knowingly" as defined in Section 76-2-103.
 - (c) "Party" means the division, Wildlife Board, or respondent.
 - (d) "Presiding officer" means the hearing officer appointed by the division director to conduct~~[-revocation- or]~~ suspension proceedings.
 - (e) "Recklessly" as defined in Section 76-2-103.
 - (f) "Respondent" means a person against whom a suspension proceeding is initiated.
 - (g) "Single Criminal episode" means all conduct, which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective as defined in 76-1-401.

R657-26-3. Commencement of Suspension Proceedings.

- (1)(a) Each adjudicative proceeding shall be commenced by the presiding officer~~[-by]~~ filing a notice of agency action.
- (2) The notice of agency action shall be filed and served according to the requirements provided in Section 63-46b-3(2).
- (3) All suspension proceedings conducted by the presiding officer may convert the hearing to a formal hearing anytime before a final order is issued if:
 - (a) conversion of the proceeding is in the public interest; and
 - (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

R657-26-4. Procedures for Suspension Proceedings.

- (1)(a) An answer or other pleading responsive to the allegations in the notice of agency action does not need to be filed by the respondent.
- (b) If an answer to the notice of agency action is filed, the answer shall include:
 - (i) the name of the respondent;
 - (ii) the case number or other reference number;
 - (iii) the facts surrounding the allegations;
 - (iv) a response to the allegations that the violation was committed knowingly, intentionally or recklessly; and
 - (v) the date the answer was mailed.

- (2) The respondent may access any relevant information contained in the division's files and all materials and information gathered in the investigation of the respondent, to the extent permitted by law.
- (3) Discovery and intervention is prohibited.

R657-26-5. Hearings.

- (1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.
- (b) A hearing shall be held if the division receives a written request for a hearing from the respondent within 20 calendar days after the date the notice of agency action is issued.
- (2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.
- (3) Hearings shall be open to the public.
- (4) After reviewing all the information provided by the parties, the presiding officer ~~shall~~ may suspend the respondent's license, permit or certificate of registration privileges in accordance with Section 23-19-9.
- (5)(a) The type of license, permit or certificate of registration privilege suspension imposed shall be within the following categories:
 - (i) all fishing licenses and permits;
 - (ii) all furbearer and bobcat licenses and permits;
 - (iii) all ~~big game~~ hunting licenses and permits for big game;
 - (iv) all ~~small game~~ hunting licenses and permits~~[-]~~ for small game and wild turkey permits. Any person suspended for small game will be eligible to purchase an alternate hunting license to apply for and obtain big game, cougar, and bear permits but will not be issued a hunting license valid to take small game;
 - (v) all permits to take and pursue cougar and bear;
 - (vi) all falconry permits and falconry certificates of registration;
 - (vii) certificates of registration of a type specified; or
 - (viii) all hunting licenses, permits and certificates of registration;
 - (ix) all licenses, permits and certificates of registration issued by the division.
- (b) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity for which the person was participating in when the violation occurred.
- (c) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity that involved the unlawful taking of ~~terrestrial~~ protected wildlife for which no season has been established.
- (d) If the violation involves acts that occurred while participating in an activity regulated by Title 23, which include more than one of the types of license or permit privileges as provided in Subsection (a), the presiding officer may suspend the license, permit or certificate of registration privileges for all categories that apply.
- (e) The presiding officer may impose a suspension of all privileges to hunt protected wildlife or all privileges to take protected wildlife if the violations are found by the

~~[hearing]presiding~~ officer to be conspicuously bad or offensive~~[-and]~~. This may include, but are not restricted to, the violations described in Subsection (e)(i) through Subsection (e)(viii).

(i) Any violation which could result in suspension that involves taking, in a single criminal episode, four times the legal bag limit of any protected fish species.

(ii) Any violation which could result in suspension that involves taking, in a single criminal episode, three times the legal bag limit of any small game species or waterfowl.

(iii) Any violation which could result in suspension that involves a once-in-a-lifetime species.

(iv) Any violation which could result in suspension that occurs out of season or in a closed area for the species illegally taken and involves a trophy animal.

(v) Three or more felony or class A misdemeanor violations under Section 23-20-4 in a seven-year period, regardless of suspension periods previously imposed.

(vi) Any violation which could result in suspension that involves the ~~[illegal]~~unlawful taking, in a single criminal episode, of two or more big game animals~~[not classified as once-in-a-lifetime]~~.

(vii) Any violation which could result in suspension that involves the ~~[illegal]~~unlawful taking, in a single criminal episode, of two or more cougar or bear.

(viii) Any violation subject to Section 23-19-9 that further violates an existing order of revocation or suspension recognized by the Utah Division of Wildlife Resources.

(ix) Any violation which involves the unlawful taking of big game for pecuniary gain.

(6) The director shall appoint a qualified person as a ~~[hearing]presiding~~ officer in accordance with Section 23-19-9(9).

(7) The presiding officer may suspend privileges to take protected wildlife up to but not to exceed the limits as defined in Utah Code Sections 23-19-9(4) and (5). The presiding officer will take into account any aggravating or mitigating circumstances when deciding the length of a suspension period.

(8) The presiding officer may suspend privileges based on two or more separate criminal episodes either concurrently or consecutively.

(9) The presiding officer may suspend privileges previously suspended by a court, presiding officer or the Wildlife Board either concurrently or consecutively.

~~(7)(a)~~10) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration in accordance with Section 23-19-9(10).

~~(8)~~11) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

R657-26-6. Issuance of Decision and Order.

(1) Within a reasonable time after the close of the adjudicative proceeding, the presiding officer shall issue a signed, written order that states:

- (a) the decision;
- (b) the reasons for the decision;
- (c) a notice of any right of administrative~~[or judicial]~~ review available to the parties; and
- (d) the time limits for filing an appeal or requesting a review.

(2) The decision and order shall be based on facts appearing in division files and on the testimony and facts presented in evidence at the hearing.

(3)(a) A copy of the decision and order shall be promptly mailed to all parties.

(b) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

R657-26-7. Default.

(1) The presiding officer may enter an order of default against the respondent if the respondent fails to participate, either in writing or in person, in the adjudicative proceeding.

(2) Upon ~~[issuing]~~considering the order of default, the presiding officer shall ~~[complete the adjudicative proceeding without participation of the party in]~~review the investigative file to determine the elements for suspension are satisfied and shall issue and order of default ~~[and shall]~~that:

(a) include a statement of the grounds for default;

(b) ~~[make]~~makes a finding of all relevant issues required in ~~[Sections R657-26-5(4) and (5)]~~Utah Code Section 23-19-9; and

(c) mail a copy of the order to all parties.

(i) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

(3)(a) A defaulted party may seek to have the presiding officer set aside the default order, and any order in the adjudicative proceeding issued subsequent to such default, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default order and any subsequent order shall be made in writing to the presiding officer.

(c) A defaulted party may seek Wildlife Board Review under Section R657-26-8 only on the decision of the presiding officer on the motion to set aside the default.

R657-26-8. Wildlife Board Review - Procedure.

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be received within 30 calendar days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 30 calendar days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board may hold a de novo formal hearing in accordance with the provisions of Section 63-46b-6 through Section 63-46b-10. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

- affirm the decision;
- vacate or remand the decision;
- amend the type of suspension ordered by the presiding officer; or

(d) amend the suspension period not to exceed the statutory maximums.

(7) The Wildlife Board chair may vote in an adjudicative proceedings decision, and any Wildlife Board decision shall be supported by a majority of the voting members present.

(8)(a) Within a reasonable time after the close of the formal hearing, the chair of the Wildlife Board shall issue a written order that affirms, vacates or remands the decision or amends the type of suspension ordered by the hearing officer.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

- a designation of the statute permitting review;
- a statement of the issues reviewed;
- findings of fact as to each of the issues reviewed;
- conclusions of law as to each of the issues reviewed;
- whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration~~[or judicial review]~~; and

(vii) the time limits applicable to any ~~[appeal or]~~ review.

R657-26-9. Reinstatement of a License, Permit, or Certificate of Registration.

(1) A presiding officer may reinstate a person's license, permit, or certificate of registration suspended under Section 23-19-9.5 upon receiving a written request for reinstatement.

(2) The person making the request shall include:

- the person's name, phone number, and mailing address;
- the number of the license, permit, or certificate of registration that was suspended or revoked;
- the date the violation occurred;
- the date the request was mailed;
- the state in which the violation occurred;
- a copy of a receipt from the court where the violation was processed stating the violation is no longer outstanding; and
- the person's signature.

(3) Within a reasonable time of receiving the request, the presiding officer shall issue a written order stating whether the request is granted or denied and the reasons for the decision.

(4) If a presiding officer denies a person's request for reinstatement, the person may submit a request for reconsideration by following the procedures provided in Section 63-46b-13.

KEY: wildlife, suspensions, violations

Date of Enactment of Last Substantive Change: ~~[October 24, 2006]~~**August 7, 2007**

Notice of Continuation: August 21, 2006

Authorizing, and Implemented or Interpreted Law: 23-13-2; 23-14-1; 23-14-19; 23-19-9; 23-20-14; 63-46b-13; 63-46b-5



Natural Resources, Wildlife Resources **R657-28** Use of Division Lands - Rights-of-Way, Leases, and Special Use Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30084

FILED: 06/14/2007, 08:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the Use of Division Lands rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) combine the text from Rule R657-18 with this rule; and 2) make technical corrections. (DAR NOTE: The proposed repeal of Rule R657-18 is under DAR No. 30083 in this issue, July 1, 2007, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-8

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These amendments provide clarification, requirements, and restrictions on the use of Division of Wildlife Resources' lands. The combining of Rule R657-18 with Rule R657-28 is to aid in simplifying the rules that govern public lands. The compensation that division may receive on all right-of-way, leases, and special use permits will not amount to any additional costs or savings. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** These amendments provide procedures and restrictions for the use of Division of Wildlife Resources' lands. Therefore, these amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification, simplification, and providing restrictions on the use of Division of Wildlife Resources' lands. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-28. Use of Division Lands [~~—Rights of Way, Leases, and Special Use Permits~~].

R657-28-1. Purpose and Authority.

(1) Pursuant to Utah Code Section 23-14-8 and Section 23-21-2.1, this rule [~~provides~~] defines:

(a) lawful uses and activities on division lands; and
(b) the application procedures and administration [~~of~~] on division lands for rights-of-way[~~;~~]; grazing permits; agricultural leases[~~;~~ and]; leases; special use permits[~~on division lands~~]; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.

(2) The division may approve a land use only if, in the opinion of the division, such use does not unreasonably conflict with the intended use of the land or is not detrimental to wildlife or wildlife habitat, and the impacts can be avoided, minimized, [~~or mitigated~~] rectified, or compensated.

(3) The division may not authorize a land use under this rule without first obtaining the approval of the persons or entities, if any, holding contractual or proprietary interests in the subject property.

(4) Nothing in this rule shall prevent the division from closing division [~~land~~] lands to [~~the~~] public use or activity if the division determines that [~~human~~] the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.

[~~(4) Leases granted by the division for purposes of grazing livestock on division land are excluded from the provisions of this rule~~]

(5) The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.

R657-28-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agricultural lease" means any lease given for purposes of cultivating crops of any kind.

(b) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or

any part thereof cut and removed from the place where it was grown, without the foliage being removed.

(~~[a]~~c) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.

(d) "Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.

(e) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.

(f) "Division lands" means all land and waters owned by the division, or managed by the division under written agreement. When lands or waters owned by other parties are managed by the division under written agreement, and the terms of the agreement conflict with this Rule, the agreement shall govern.

(g) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.

(h) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division grazing permittees, or any other purpose designated by the division.

(i) "In-Kind Compensation" means anything paid or given in goods, commodities, or services in lieu of money, that is done on, affixed to, invested in, or beneficial to division property for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.

(~~[b]~~j) "Lease" means an agreement that authorizes use of division land for a specified term, purpose, and for a specified fee or in-kind compensation, or a combination thereof.

(k) "Livestock Operator" means any individual or entity that owns or manages domestic livestock.

(l) "Organized Event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, or a group is assembled as part of a club or organizational activity.

(m) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.

(n) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.

(~~[e]~~o) "Right-of-way Lease" means a lease for an easement or right-of-way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.

(p) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.

(q) "Seed Harvesting" means the gathering of any seed on division property for any purpose.

(~~[d]~~r) "Special use permit" means a temporary authorization for a specific, non-depleting land use, including seismic or land surveys, research sites, organized activity, or physical access on division lands.

(s) "Wood product" means any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands.

The division manages division lands and water rights to directly or indirectly protect and improve wildlife habitats and watersheds; increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities; conserve, protect, and recover sensitive wildlife species and their habitats; and provide wildlife-related recreational opportunities.

R657-28-4. Unlawful Uses and Activities on Division Lands.

(1) Except as authorized by statute, rule, contractual agreement, special use permit, certificates of registration, or public notice, a person, on division land, may not:

(a) remove, extract, use, consume or destroy any improvement or cultural or historic resource;

(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;

(c) allow livestock to graze, except as allowed by permit;

(d) remove any plant or portion thereof for purposes of commercial gain;

(e) enter, use, or occupy division land when posted against such entry, use, or occupancy;

(f) enter, use, or occupy division land in group sizes greater than twenty-five (25) people;

(g) enter, use, or occupy division land while engaged in an organized event;

(h) use, occupy, destroy, move, or construct any structure including fences, water control devices, roads, surveys and section markers, or signs;

(i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;

(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies.

(k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;

(l) park a motor vehicle or trailer or camp for more than 14 consecutive days unless posted for a different duration;

(m) light a fire without adequate provision to prevent spreading or leave a fire unattended;

(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

(o) use motorized vehicles of any kind except as authorized by declaration, management plan, or posting; or

(p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.

(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:

(a) the value of the resource removed, destroyed, or extracted;

(b) the amount of damage committed;

(c) the value of any losses suffered as a result of interference with authorized activities; and

(d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.

(3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.

(4) The division's law enforcement section shall be primarily responsible for the investigation of facts pertinent to filing for

judicial remedy related to any unlawful use of, or activity on, division lands.

(5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.

(6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11.

R657-28-5. Domestic Livestock Grazing on Division Lands.

(1) The division may use domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat on particular division properties.

(2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.

(3) Grazing permits may be issued by the division through a proposal solicitation process in accordance with R657-28-20 to achieve the division's vegetation or wildlife management goals.

(4) In the event an unanticipated prescribed grazing treatment is necessary for a division property, the division reserves the right to enter into contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this paragraph shall not contain an option to renew and shall be limited to the current grazing season in duration.

(5) Grazing permits issued by the division shall include:

(a) The name, and a map, of the subject property to be grazed;

(b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;

(c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;

(d) Identification of the key forage species for which utilization is to be measured;

(e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;

(f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in animal unit months that will achieve its vegetation management goals;

(g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit; or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.

(h) Identification of a reserved grass bank, if any, that the division may at its option offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.

(k) A statement assuring public access to division property by the permittee.

(1) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.

(6) The division may at its option suspend domestic livestock grazing authorized under any permit prior to expiration of the permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.

(a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.

(b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.

(c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.

(7) Compensation received by the division for grazing permits may be in-kind or monetary, or a combination of both, as specified by the division.

(8) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the permit have been changed by the division.

(9) Compensation due from the permittee shall be pro-rated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.

(10) The division may require compensation to be paid prior to livestock being placed on division land each year.

R657-28-6. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Termination of Grazing Permit.

(1) The division may unilaterally terminate a grazing permit at any time if the permittee has managed permittee's livestock in a manner that breaches the provisions of the grazing permit.

(a) If the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division property.

(b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits.

(2) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance was satisfactory or unsatisfactory.

R657-28-7. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Option to Renew.

(1) Permits shall be issued for a term no greater than one year.

(2) Permittees who receive a satisfactory review for the previous year may have the option to renew the permit for the coming year provided the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat; except the division may at its discretion:

(a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;

(b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit.

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding.

(c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.

(3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.

(4) A permittee may hold a grazing permit on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;

(5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands.

(6) The division reserves the right to issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

R657-28-8. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Legal Effect.

(1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.

(2) Permittees have no property rights in a grazing permit.

R657-28-9. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Range Improvement Projects.

(1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands without the express written consent of the division.

(2) Range improvements, including fences, corrals, water works, etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.

(3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.

(4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-10. Grazing of Domestic Livestock on Division Lands - - Trespass.

(1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:

(a) The use of forage at times and at places not authorized in a permit.

(b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.

(c) Grazing, staging, or trailing livestock on or across division land without a valid permit or publicly-recorded right-of-entry.

(d) The dumping of garbage or any other material on the division land.

(2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.

R657-28-11. Grazing of Domestic Livestock on Division Lands - Trailing and Staging Livestock Across or On Division Lands.

(1) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.

(2) The authorization to trail livestock across division land shall restrict and limit the route, the number and type of animals, and the time and duration. (not to exceed two consecutive days).

(3) Staging of livestock on division lands is prohibited without the prior written consent of the division

R657-28-12. Grazing of Domestic Livestock on Division Lands - Grassbanks.

(1) The division may designate specific properties as grassbanks for purposes of:

(a) Trading forage for habitat conservation actions on private or public lands;

(b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or

(c) Any other purpose the division may identify.

(2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.

(3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.

R657-28-13. Wood Products -- General Restrictions.

(1) A person may not cut or remove any wood product from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.

(2) A wood products collection contract or permit may be issued for a designated area and a specified period of time for:

(a) Removing trees;

(b) Harvesting Christmas trees; or

(c) Collecting firewood, posts, or ornamentals.

(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.

(4) Permits are nontransferable and nonrefundable.

(5) Permittees must accompany wood products from the cutting site.

(6) Permits are available at the Salt Lake and regional offices.

(7) The division may set a maximum number of permits to harvest wood products on division lands.

R657-28-14. Wood Products -- Firewood Permits.

(1) A person may purchase one permit per year to collect firewood on division lands.

(2) A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:

(a) Firewood collection is limited to felled trees on chained areas, except in designated live tree removal areas.

(b) A living or dead tree containing a nesting cavity may not be felled or collected.

(3) Firewood may be collected from May 1 through November 30 or as otherwise specified in the permit.

(4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.

R657-28-15. Wood Products -- Christmas Tree Permits.

(1) A person may purchase one permit per year to cut a Christmas tree on division lands.

(2) A tag will be issued with each Christmas tree permit.

(3) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.

(4) The tag must be visibly attached to the tree before it is transported from the cutting site.

(5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.

(6) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.

(7) Division lands are closed from December 1 through April 30 or as otherwise specified in the permit.

R657-28-16. Wood Products -- Ornamentals and Posts.

(1) A person may purchase one permit per year to remove ornamentals or cut posts on division lands.

(2) A person may harvest ornamentals up to an aggregate value of \$60 per permit.

(3) A person may harvest posts up to an aggregate value of \$50 per permit.

(4) The value of ornamentals and posts are those values determined yearly by the Utah Legislature; compensation received by the division may be monetary, in-kind, or both.

R657-28-17. Wood Products -- Contract Agreements.

(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.

(2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.

(3) Compensation may be either in-kind, monetary, or both.

R657-28-18. Seed Harvesting.

(1) The division may issue seed harvesting permits that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.

(2) Seed harvesting permits may be issued under a competitive bid process or on a first-come, first-served basis.

(a) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset of harvest.

(i) The division shall notify all parties by mail or electronic mail who have provided contact information and who have previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.

(ii) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.

(b) The division may issue seed harvesting permits on a first-come, first-served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.

(i) Negotiated compensation shall reflect a fair market value of the opportunity provided.

(ii) In order to determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:

(A) results of competitive bids for seed harvesting permits on other division properties;

(B) market information obtained from other landowners, including other state agencies;

(C) market information provided by a seed harvester's competitors; or

(D) market information provided by seed wholesalers or retailers; etc.

(3) Compensation received by the division may be either a percentage of the seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.

(a) All seed delivered to the division as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the Utah Seed Act (Utah Code Title 4 Chapter 16), and Utah Seed Law (Utah Administrative Rule R68-8), and shall also meet minimum germination and purity standards determined by the division.

(4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.

(5) If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.

(6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.

(7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.

R657-28-19. Agricultural Leases.

(1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.

(2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).

(3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in-kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.

(4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.

(5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.

(6) At the time of initial lease payment, the lessee may be required to post with the division a bond in the form and amount as

may be determined by the division to assure compliance with all terms and conditions of the lease.

(7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.

(8) Agricultural Leases issued by the division shall include:

(a) The name, and a map, of the subject property to be leased;

(b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;

(c) A description of the benefit expected for wildlife;

(d) A description of the rights of the lessee and the division;

(e) The type and amount of compensation to be delivered to the division, and the date compensation is due;

(f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;

(g) A statement describing how reporting is to be made of the quantity of crop harvested if a crop share is identified as in-kind compensation;

(h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;

(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division;

(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;

(k) A statement assuring non-motorized public access to division property by the lessee;

(l) A statement that the lessee is solely responsible for fence maintenance of the leased property;

(m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;

(n) A statement indemnifying the state from all actions of the lessee;

(o) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease;

(9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.

(10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion:

(a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;

(b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;

(c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;

(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.

(d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.

(i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year;

(ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.

(e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.

(11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.

(12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.

(a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.

(13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.

R657-28-20. Competitive Proposal Solicitation Process.

(1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.

(2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.

(a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.

(b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting

contract, that would assist an applicant in making a reasonably informed proposal.

(3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full discretion to select which process to use:

(a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:

(i) Resources available to applicant that can be used to control livestock movement on the subject division property;

(ii) Applicant's ability to meet lease or prescribed management objectives;

(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;

(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;

(v) Applicant's knowledge of principles of range science, range management, or agriculture;

(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;

(vii) Applicant's right to the use of adjoining or nearby properties with which management of a division property may be coordinated;

(viii) Proximity of applicant's property to division property;

(ix) Functionality of subject division property's perimeter fences in controlling livestock movement on or off the subject property;

(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's grazing permit, lease, or wood harvesting contract administrative costs;

(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.

(b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. The division shall have full authority to:

(i) Offer counter-proposals;

(ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;

(iii) Terminate the negotiation process entirely; or

(iv) Require the respondents to proceed through the process described in Subsection (3)(a).

(v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.

(4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.

R657-28-21. Applications to Appropriate Water on Division Lands.

~~No party possessing a right-of-way lease, grazing permit, agricultural lease, non-agricultural lease, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources. All water structures, including impoundment, diversion and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division.~~

R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division Lands.

~~(1) The division shall not sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands by any private or public entity except when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.~~

~~(2) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.~~

~~(3) Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.~~

~~(4) Bonding in an amount equal to two-times the estimated cost of reclamation shall be required by the division prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.~~

~~(5) Nothing herein shall be construed as superceding the division's legal obligations to obtain approval from the U.S. Fish and Wildlife Service or any other party possessing a legal interest in the property prior to authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.~~

~~R657-28-3.~~ R657-28-23. Rights-of-Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits -- Application Procedures -- Required Information -- Conditional Approval.

~~(1) To apply for a right-of-way[;] lease, [~~or~~]special use permit[~~or~~], or non-agricultural lease of division lands, a person shall:~~

~~(a) complete and submit [~~a completed~~]an application[;] provided by the division[;] to the regional supervisor in the appropriate division regional office;~~

~~(b) pay a nonrefundable application fee;~~

~~(c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and~~

~~(d) include the following information with the application:~~

~~(i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.[~~

~~—(ii) A project plan that includes:]~~

~~[(A)](ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right-of-way lease, special use permit, or lease.~~

~~(iii) A project plan that includes:~~

~~(A) project alternatives[~~that were considered but rejected, and specific reasons those alternatives were rejected;~~], including alternatives which do not affect the division;~~

~~(B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;~~

~~(C) identification of adverse impacts to wildlife and wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and~~

~~[(E)](D) project alternatives [~~which~~]that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected.~~

~~(2) Upon receiving the application, application fee, and the information [~~prescribed~~]required in Subsection (1)(d) the division director [~~shall~~]or the director's designee may either deny the application or grant a conditional approval within 60 days.~~

~~(3) If the application is denied, the director shall provide a written notice to the applicant.~~

~~(4) Before final approval is granted the division may require the applicant to provide the following additional information:~~

~~(a) A certified copy of a survey of the area affected by the proposed project [~~signed~~]prepared by a licensed surveyor. A centerline survey [~~indicating the width of~~]describing the proposed right-of-way lease and its width is adequate for a pipeline, road, power line, or similar use.~~

~~(b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used by the division.~~

~~[(b)](c) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.~~

~~[(e)] Evidence that the applicant has given the Natural Resources Conservation Service a reasonable opportunity to review and comment on the proposed project.~~

~~—(d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and [~~user opportunity, including beneficial effects, resulting from the proposed project~~]public recreational use opportunities.~~

~~(e) A survey of threatened, endangered and candidate plant and animal species[~~and~~], Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.~~

~~(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.~~

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

R657-28-4. — 24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits -- Final Determination -- Project Review -- Contract Provisions.

(1) Within 60 days of receiving the application fee and information required in Section R657-28-~~3~~23, or 60 days of granting conditional approval, whichever is greater, the division director or the director's designee shall make a final determination to ~~approve~~affirm or modify the conditional approval or deny the application.

(2)~~(a)~~ The director or the director's designee shall deny an application if:

~~(i)~~(a) the application does not include the ~~required~~information requested by the division;

~~(ii)~~(b) the ~~known~~potential impact to wildlife, wildlife habitat, public recreation, or cultural or historic resources is unacceptable;~~or~~

~~(iii)~~(c) the applicant has not, in the opinion of the division, adequately considered ways to avoid or minimize impacts~~;~~including alternative sites; or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts~~;~~

~~(d)~~ there are, in the opinion of the division, alternative locations reasonably available on lands not owned by the division for the requested use, including organized events that may harm wildlife or wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails; or

~~(e)~~ if the applicant's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party.

~~(f)~~ the applicant is in default on any previous obligation to the division.

~~(b)~~3 If the application is denied, the division shall provide a written notice to the applicant.

~~(3)~~4 A right-of-way lease or other form of lease may include provisions requiring the applicant to:

(a) ~~restore~~Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the pre-project grade and contour, and revegetate the impacted area to division specifications;

(b) ~~adhere~~Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-~~3~~23(1)(d)~~(iii)~~; and

(c) ~~pay~~Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, ~~revegetation~~re-vegetation, compensatory mitigation, and all other expenses associated with the project~~;~~and

~~(d)~~ obtain division approval to sublease or assign any rights granted from a right-of-way or lease.

~~(4)~~5 A special use permit shall include any applicable provision prescribed in Subsection ~~(3)~~4.

R657-28-5. Bonding Provisions.

~~(6)~~ A right-of-way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the

division explicitly reserves the right to grant leases for shorter periods.

~~(1)~~ Prior to approval and issuance of a right-of-way, lease, or special use permit the division may require the applicant to post a surety bond in an amount~~(7)~~. The termination date for a lease will be determined by the division~~(7)~~ after assessing the activity applied for and the needs of the lessee.

~~(2)~~ The division may use the surety bond to pay for reclamation, mitigation, payment of any money owed the division, or any other unpaid cost incurred by the holder of the right-of-way, lease, or special use permit according to the terms and conditions set therein.

~~(3)~~ The division may require a reasonable increase in the amount of the bond after providing the holder of the right-of-way, lease, or special use permit 30 days written notice.

~~(4)~~ Following completion of a lease, right-of-way or special use permit, the division shall release any unused bonds back to the lessee within six months.~~(8)~~ A special use permit may only be granted for a maximum period of one year from the date of signing.

R657-28-6. — 28-25. Right-of-Way Leases, Division Land Leases, Special Use Permits -- Compensation.

(1) The division shall receive compensation for all right-of-~~ways~~way leases, division land leases, and special use permits ~~as provided in Subsections (a) through (d)~~consistent with the following requirements:

(a) Compensation ~~for rights-of-ways, leases, and special use permits~~ may be based on:

(i) the cost incurred to the division in evaluating and preparing the right-of-way~~;~~ lease, division land lease, or special use permit;

(ii) the cost incurred by the division in administering the right-of-way~~;~~ lease, division land lease, or special use permit ;

(iii) the appraised value of the affected property;

(iv) the fair market value of the use;

~~(v)~~ impacts to wildlife and wildlife habitat;~~(v)~~ fee schedule set forth by the Utah Legislature;

~~(vi)~~ impacts to wildlife and wildlife habitat;

~~(vii)~~ impacts to public access; and

~~(viii)~~ impacts to public opportunities to engage in wildlife related activities.

~~(b)~~ ~~In addition to any other compensation assessed, the division may require annual compensation for administration costs.~~

~~(c)~~ In lieu of ~~part or all of the assessed~~monetary compensation, the division~~;~~at its sole discretion, may accept ~~mitigation including~~in-kind compensation in the form of, but not limited to, land enhancements, habitat maintenance or improvements, land exchange, public access for wildlife related activities, or other forms of ~~mitigation~~compensation that are beneficial to wildlife management and the division's statutory responsibilities.

~~(d)~~ When effective mitigation opportunities are limited, the division may accept partial or full compensation in the form of a negotiated payment.

(2) Every right-of-way~~;~~ lease, division land lease, and special use permit shall be documented in writing ~~by agreement~~ and contain the following information:

(a) the names of the parties and other persons involved in the transaction;

(b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant

must provide evidence he/she is authorized to sign on the applicant's behalf;

(c) a detailed description of the compensation, including compensatory mitigation;

(d) a detailed description of the location, terms, and conditions of the right-of-way~~], lease, division land~~ lease, or special use permit;

(e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its terms and conditions;

(f) the commencement and termination date of the right-of-way~~], lease, division land~~ lease, or special use permit.

R657-28-~~7-]~~26. Termination of ~~[Rights]~~Right-of-Way~~],~~ Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.

~~[(1) A right of way may only be granted for a maximum of 30 years from the date of signing.~~

~~—[(2) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.~~

~~—[(3) A special use permit may only be granted for a maximum of one year from the date of signing.]~~ (1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.

(~~[4]~~2)(~~(a)~~) A person may request termination of their ~~[right of way]~~grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.

(~~[b]~~3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.

(4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.

~~[(e) Before the]~~(5) The division may not grant ~~[the request for termination of a right of way, lease, or]~~a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project ~~[must be]~~are completed.

(~~[5]~~6)(~~(a)~~) The division may unilaterally terminate ~~[a right of way, lease, or]~~any grazing permit, special use permit, or lease and require full reclamation of disturbed areas ~~[if]~~where the ~~[person]~~holder violates any of the conditions of the ~~[right of way, lease, or]~~grazing permit, special use permit, or lease.

(~~[b]~~7) Before terminating a ~~[right of way, lease, or]~~grazing permit, special use permit, or lease the division shall:

(~~[i]~~a) ~~[give]~~Give written notice of the intended ~~[agency]~~division action to the holder of the ~~[right of way,]~~permit or lease~~], or special use permit~~ by certified mail;

(~~[ii]~~b) ~~[document]~~Document noncompliance; and

(~~[iii]~~c) ~~[allow]~~Allow the holder of the ~~[right of way,]~~lease~~], or [special use]~~permit 30 days to remedy the violation and comply with the terms set therein.

(8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The

division shall notify the party in writing of the party's disqualification.

R657-28-~~8-]~~27. Renewal of ~~[Rights]~~Right-of-Way Leases and Non-Agricultural Division Land Leases.

(1) A person may apply ~~[for a renewal of]~~to renew a right-of-way lease or division land lease by:

(a) submitting a written request to the division;

(b) updating the original application; and

(c) paying a renewal fee.

(2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right-of-way lease or division land lease.

~~—[(3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.~~

(~~[3]~~4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right-of-way lease or division land lease.

(~~[4]~~5) The division may deny ~~[a]~~renewal of a right-of-way ~~[or]~~lease or division land lease for any of the following reasons:

(a) ~~[Impacts]~~Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources~~[are unacceptable]~~;

(b) Continuation of the right-of-way ~~[or]~~lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;

(c) The person has not complied with terms and conditions of the lease contract; or

(d) The management goals for the area have changed to the extent that the right-of-way ~~[or]~~lease or division land lease is no longer compatible.

(~~[5]~~6) The division shall provide a written notice to the applicant stating the reason for denial.

(7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.

R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right-of-Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.

(1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind may not be assigned, partially assigned, subpermitted, leased, subleased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.

(2) A sublease, conveyance, or assignment may be made only to a person, firm, association, or corporation qualified to do business in the state of Utah, and which is not in default under the laws of the state of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the division.

(3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:

(a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the

permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or

(b) an alternate fee established by, and at the discretion of, the division.

(4) A sublease, conveyance, or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

(5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.

(6) A sublease, conveyance, or assignment shall be executed according to division procedures.

(7) A sublease, conveyance, or assignment is not effective until approval is given by the division. Any sublease, conveyance, or assignment made without such approval is void.

R657-28-29. Abandonment of Right-of-Way Leases.

(1) If within 365 days of the date of execution of right-of-way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right-of-way lease, or the lessee otherwise fails to use all or any portion of a right-of-way, that portion of the right-of-way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division. (2) If proof of lessee's use of all or a portion of a right-of-way lease cannot be provided for any contiguous three-year period, that portion of the right-of-way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division.

(2) In order to facilitate the determination of an abandonment of right-of-way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.

R657-28-19. Unlawful Uses and Activities on Division Lands.

(1) Except as authorized by statute, rule, contractual agreement, certificates of registration, or public notice, a person, on division land, may not:

(a) remove, extract, use, consume, or destroy any mineral resource, gravel, sand, soil, vegetation except as provided in R657-18 Wood Products on division lands, cultural or historic resource, or improvement;

(b) graze livestock;

(c) enter, use, or occupy division land when posted against such entry, use, or occupancy;

(d) use, occupy, destroy, move, or construct any structure including fences, water control devices, roads, surveys and section markers, or signs;

(e) solicit, promote, negotiate, barter, sell or trade any product or service for commercial gain;

(f) park a motor vehicle or trailer or camp for more than 21 consecutive days unless posted for a different duration;

(g) light a fire without adequate provision to prevent spreading or leave a fire unattended;

(h) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

(i) release or permit a domestic pet to run at large not under the owner's control; or

(j) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.

(2) The provisions of this Section do not apply to division employees in the performance of their duties.

(3) Except as otherwise provided by statute, the penalty for a violation of any provision of this Section is prescribed in Section 23-13-11-30. **Bonding.**

(1) Prior to approval and issuance of a right-of-way lease, division land lease, or special use permit, the division may require the applicant to post a surety bond in an amount determined by the division.

(2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or with a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.

(3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right-of-way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.

(4) The division may require a reasonable increase from time-to-time in the amount of the bond after providing right-of-way lessee, division land lessee, or special use permit holder 30 days written notice.

(5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(6) Following termination of a right-of-way lease, division land lease or special use permit, and satisfaction of the contractual obligations of the holder, the division shall release any unused bonds back to the lessee or permit holder within six months.

KEY: wildlife, right-of-way[?], leases, land use, wood
Date of Enactment or Last Substantive Amendment: [~~August 15, 2000~~ August 7, 2007]

Notice of Continuation: June 20, 2002

Authorizing, and Implemented or Interpreted Law: 23-13-8



Natural Resources, Wildlife Resources

R657-33

Taking Bear

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30069

FILED: 06/12/2007, 21:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to taking bear.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a bear permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining bear permits; it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a sportsman to purchase a hunting or combination license prior to applying for or obtaining bear permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining any bear permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsman. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents wishing to hunt bear in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting bear.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-33. Taking Bear.****R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-3. Permits for Taking Bear.

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified hunt unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain a valid bear pursuit permit.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

(4) To obtain a limited entry bear permit, a person must possess a Utah hunting or combination license.

R657-33-4. Permits for Pursuing Bear.

(1) To pursue bear, a person must obtain a bear pursuit permit as provided in the proclamation of the Wildlife Board for taking bear.

(2) Residents and nonresidents may purchase bear pursuit permits.

(3) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-26. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(a) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(3) A person may not:

- (a) take or pursue a female bear with cubs;
- (b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or
- (c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (c) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12.

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-27. General Application Information.

(1) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a bear hunting permit.

([1]2) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

([2]3) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

R657-33-30. Fees.

- (1) Each application must include:
 - (a) the permit fee; and
 - (b) the nonrefundable handling fee.
 - (c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.
- (2) Fees must be paid in accordance with Rule R657-42-8.

R657-33-31. Drawings and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of draw results by the date published in the proclamation of the Wildlife Board for taking and pursuing bear. The drawing results will be posted on the division's Web site.

(3) Permits remaining after the drawing will be sold on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing provided a written request for such is received by the date

published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking bear.

(6)(a) An applicant may amend their application for the limited entry bear permit drawing provided a written request for such is received by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking bear.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended, and that amendment results in an error, the division reserves the right to reject the entire application.

(8) Handling fees and hunting or combination license fees will not be refunded.

R657-33-33. Refunds.

(1) Unsuccessful applicants who applied with a credit or debit card will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

KEY: wildlife, bear, game laws

Date of Enactment or Last Substantive Change: ~~March 12, 2007~~ **August 7, 2007**

Notice of Continuation: December 31, 2002

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2



Natural Resources, Wildlife Resources **R657-38** Dedicated Hunter Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30070

FILED: 06/12/2007, 21:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Dedicated Hunter Program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game, cougar, bear, or turkey permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) reduce the big game hunting age from 14 to 12, pursuant to H.B. 67 passed during the 2007 general session of the Utah State Legislature; 3) prohibit a person under the age of 14 from obtaining premium limited entry,

limited entry, once-in-a-lifetime, and cooperative wildlife management unit permits or bonus points, pursuant to H.B. 67; and 4) make technical corrections for consistency and accuracy. (DAR NOTES: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007. H.B. 67 (2007) is found at Chapter 139, Laws of Utah 2007, and was effective 04/30/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment reduces the age requirement for hunting big game, prohibits young hunters from applying for certain permits, and requires a hunting or combination license prior to applying for or obtaining big game, cougar, bear, or turkey permits. Since this amendment reduces the age requirement to hunt big game, it has the potential to expand the number of applicants applying for and obtaining big game permits. However, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: Since this amendment reduces the age requirement to hunt big game, it has the potential to expand the number of applicants applying for and obtaining big game permits. This amendment has the potential to increase the amount of hunters traveling to and purchasing products from local businesses. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment reduces the age requirement for hunting big game, prohibits young hunters from applying for certain permits, and requires a hunting or combination license prior to applying for or obtaining big game, cougar, bear, or turkey permits. Since this amendment reduces the age requirement to hunt big game, it has the potential to expand the number of applicants applying for and obtaining big game permits. This may expand the number of people purchasing licenses/goods and services at license agents. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for young hunters who decide to participate in hunting big game. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting big game.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-38. Dedicated Hunter Program.

R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program provides the opportunity for participants to:

(a) increase the opportunity for recreational general deer hunting, while the division regulates harvest;

(b) increase participation in wildlife management decisions;

(c) increase participation in wildlife conservation projects that are beneficial to wildlife conservation and the division; and

(d) attend wildlife conservation courses about hunter ethics and the division's wildlife conservation philosophies and strategies.

R657-38-3. Certificate of Registration Required.

(1)(a) To participate in the program a person must apply for, obtain and sign a certificate of registration issued by the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Certificates of registration are issued on a first-come, first-served basis at division offices.

(d) Each prospective participant must submit an application provided by the division and provide evidence of having completed a wildlife conservation course before the division may issue the certificate of registration for the program.

(e) A certificate of registration to participate in the program shall only be issued during the bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife board for taking big game.

(2) The division may deny issuing a dedicated hunter certificate of registration to a person for any of the following reasons:

(a) The application is incomplete or contains false information;

(b) The person, at the time of application, is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere;

(c) The person, in the previous five years prior to applying for the program, has been convicted of, entered a plea in abeyance to, or entered into a diversion agreement for violating any provision of:

(i) 23-20-3 Unlawful Possession or Taking Involving Big Game;

(ii) 23-20-3.5 Unlawful Taking While Trespassing;

(iii) 23-20-4 Wanton Destruction;

(iv) 23-20-8 Wasting;

(v) 23-20-14 Trespass;

(vi) 23-20-30 Failure to Tag Violations;

(vii) 23-19-1 or 23-23-10 License Violations involving Big Game;

(viii) 23-19-5 Counterfeiting Licenses;

(ix) 23-20-23 Aiding and Assisting in any of the above violations;

(x) 76-10-505 or 76-10-508 Firearms Safety Violations;

(xi) 77-7-22 Failure to Comply With a Wildlife Citation;

(xii) R657-5-11 or R657-5-12 Unlawful Possession of a Firearm by an Archer or Muzzleloader;

(xiii) R657-5-14 Spotlighting With a Weapon;

(xiv) R657-5-15 Use of Aircraft to Locate Big Game;

(xv) R657-5-18 Hunting on a Detached Tag; or

(xvi) R657-5-30 through R657-5-36 Waiting Period Violations involving Big Game;

(d) The person has violated the terms of any certificate of registration issued by the division or an associated agreement.

(e) The person has ever had a dedicated hunter certificate of registration suspended by the division.

(3) Prospective participants who have been under any wildlife suspension may not apply for the program until:

(a) their suspension period has ended; and

(b) an additional length of time equivalent to the original suspension has passed.

(4) Each certificate of registration is valid for three consecutive general deer hunting seasons.

(5)(a) Any person who is [44]12 years of age or older may obtain a certificate of registration. A person [43]11 years of age may obtain a certificate of registration if the date of that person's [44]12th birthday is before the end of the [calendar]any weapon general buck deer hunt in the year [in which]the certificate of registration is issued. A person may not use a permit to hunt big game before their 12th birthday.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(6) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general any weapon and general muzzleloader deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(7)(a) Except as provided in Subsections (b), R657-38-10(3)(a), and R657-38-10(6), a participant using a Dedicated Hunter Permit may take two deer within three years of enrollment, and only one deer in any one year as provided in Rule R657-5.

(b) Participants entering or re-entering the Dedicated Hunter Program shall be subject to any changes subsequently made in this rule during the three-year term of enrollment.

(c) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest.

(8) The certificate of registration must be signed by the participant. The certificate of registration is not valid without the required signature.

(9) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting. A participant is not required to have the Dedicated Hunter Certificate of Registration in possession while hunting.

(10) The division may issue a duplicate Dedicated Hunter Certificate of Registration pursuant to Section 23-19-10.

(11) Certificates of registration are not transferable and shall expire at the end of a participant's third general deer hunting season.

(12)(a) The program requirements set forth in Sections R657-38-7, R657-38-8, and R657-38-9 may be waived annually if the participant provides evidence of leaving the state for a minimum period of one year during the enrollment period for the Dedicated Hunter Certificate of Registration for religious or educational purposes.

(b) If the participant requests that the program requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

(13)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that their enrollment in the program be suspended for the period of their mobilization or deployment.

(14)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that the requirements set forth in Sections R657-38-7, R657-38-8, R657-38-9, and R657-38-11 be extended or satisfied as provided in Subsections (b) through (e).

(b) The program requirement set forth in Section R657-38-7 may be extended to the second or third year of their program enrollment.

(c) The program requirement set forth in Section R657-38-8 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.

(d) The program requirement set forth in Section R657-38-9 may be:

(i) extended to the third year in the program if the participant is currently in the second year of the program; and

(ii) waived in the third year of the program if the participant remains mobilized or deployed and is unable to reasonably meet the requirement.

(e) A participant must provide evidence of the mobilization or deployment.

(15) A refund for the Dedicated Hunter Certificate of Registration may not be issued, except as provided in Section 23-19-38.2. Any refund will be issued pro rata based on the number of hunting seasons actually participated in during the three-year enrollment period.

R657-38-6. Dedicated Hunter Permits.

(1)(a) Participants may hunt during the general archery, general any weapon and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(2)(a) Participants must designate a regional hunt choice upon joining the program.

(b) The regional hunt choice shall remain in effect unless otherwise changed in writing by the participant by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game.

(3)(a) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

(b) A participant who enters the program as a resident and becomes a nonresident, or claims residency outside of Utah shall be issued a nonresident at no additional charge for the remainder of the three-year enrollment period.

(c) A participant who enters the program as a nonresident and becomes a resident, or claims residency in Utah, shall be issued a resident with no reimbursement of the higher nonresident fee for the remainder of the three-year enrollment period.

(4)(a) Dedicated Hunter permits may be issued through the mail by June 1 of each year and again three weeks prior to the beginning of the general archery deer hunt, and only upon evidence that the participant has completed all program requirements [have been completed by the participant] and possesses a Utah hunting or combination license.

(b) Participants completing program requirements after June 1 may obtain their Dedicated Hunter Permit over-the-counter from any division office.

(5) A Dedicated Hunter Permit may not be issued to any participant who:

(a) does not perform the program requirements; ~~or~~

(b) violates the terms of this rule or the Dedicated Hunter Certificate of Registration;

(c) does not possess a current Utah hunting or combination license.

(6)(a) The division may issue a duplicate Dedicated Hunter Permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter Permit and tag is destroyed, lost, or stolen a participant may complete an affidavit verifying the permit was destroyed, lost, or stolen in order to obtain a duplicate.

(c) A duplicate Dedicated Hunter Permit shall not be issued after the closing date of the general any weapon buck deer hunt, however, a participant may complete an affidavit and submit a copy of the affidavit for program reporting purposes as required in Section R657-38-9(1).

(7)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42 provided annual program requirements are completed.

(b) A participant may not exchange a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may exchange a Dedicated Hunter Permit for a Dedicated Hunter Permit in any other available area prior to the opening of the general muzzleloader buck deer hunt.

(c) A participant may not surrender a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may surrender a Dedicated Hunter Permit after the opening of the buck deer archery hunt, provided the Division can verify that the permit was never in the participant's possession.

(9)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader permit.

R657-38-12. Limited Entry Dedicated Hunter Program Drawing.

(1) Any unfilled Dedicated Hunter Permit with an unused attached tag, returned to the Division by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game, may qualify the participant to be entered into the Dedicated Hunter Program Drawing provided:

(a) the participant is currently enrolled in the program; ~~and~~

(b) the participant has returned the Dedicated Hunter Permit and unused, attached tag, or an affidavit as provided in Section R657-38-6(6)(c) ~~[-]; and~~

(c) the participant is 14 years of age or older, or if the participant is 13 years of age and will have their 14th birthday in the calendar year for which the permit is issued.

(2)(a) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(b) The eligible participants and limited entry permits shall be randomly drawn.

(c) The successful participant must meet all program requirements by June 1 for the current year in which the permit is valid before the issuance of the permit.

(d) If the successful participant fails to fulfill program requirements by June 1, the permit may be issued to the next participant on the alternate drawing list as provided in Rule R657-42.

(3) The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(4)(a) The successful participant shall be notified by mail.

(b) The successful participant must submit the appropriate limited entry fee within ten business days of the date on the notification letter.

(c) If the successful participant fails to submit the required limited entry permit fee, the permit may be issued to the next participant, who would have drawn the permit, in accordance with Rule R657-42.

(5)(a) The Limited Entry Dedicated Hunter Permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(e) The recipient of a limited entry deer or elk permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(f) Bonus points shall not be awarded or utilized when applying for or obtaining Limited Entry Dedicated Hunter permits.

(g) Any participant who obtains a Limited Entry Dedicated Hunter Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

KEY: wildlife, hunting, recreation, wildlife conservation

Date of Enactment or Last Substantive Amendment: ~~February 7~~ **August 7, 2007**

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18



Natural Resources, Wildlife Resources R657-41 Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30071

FILED: 06/12/2007, 21:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to conservation and sportsman permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game, cougar, turkey, or bear permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear permits, it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or

DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a sportsman to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining any big game, cougar, turkey, or bear permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsman. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents wishing to hunt in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-8. Distributing Conservation Permits.

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:

(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;

(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;

(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and

(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.

(3) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

(8) the person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

R657-41-10. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain bighorn (ram)

(f) Rocky Mountain goat (hunter's choice)

(g) bull moose;

(h) buck pronghorn;

(i) black bear;

(j) cougar; and

(k) wild turkey.

(2) The following information on sportsman permits is provided in the proclamations of the Wildlife Board for taking protected wildlife:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

(3) a person must possess or obtain a current Utah hunting or combination license to apply for or obtain a sportsman permit.

KEY: wildlife, wildlife permits, sportsmen, conservation permits

Date of enactment or last Substantive Change: [~~August 8, 2006~~ August 7, 2007]

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources **R657-42** Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30076

FILED: 06/12/2007, 21:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to fees, exchanges, surrenders, refunds and reallocation of permits and other documents.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) add language to Section R657-42-9 to include mandatory harvest and swan reporting; and 2) set criteria for payment of late fee for mandatory harvest and swan reporting.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1 and 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendments allow for the assessment of a late fee and set criteria for payment. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget

❖ LOCAL GOVERNMENTS: Since the amendments set late fee payment criteria, this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: These amendments set criteria for assessing a late fee for hunters who fail to report. This may impose additional financial requirements on persons who fail to report their harvest information, and generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents who failed to report their harvest information. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting in Utah or who correctly report their harvest information.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.****R657-42-1. Purpose and Authority.**

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

- (a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;
- (b) R657-21, Cooperative Wildlife Management Units for Small Game;
- (c) R657-22, Commercial Hunting Areas;
- (d) R657-37, Cooperative Wildlife Management Units for Big Game; or
- (e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the Big Game proclamation.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season

date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the Waterfowl proclamation.

(c) The accepted method of payment of fee is only a credit or debit card.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~February 7~~ **August 7, 2007**

Notice of Continuation: May 14, 2003

Authorizing, and Implemented or Interpreted Law: 23-19-1; 23-19-38; 23-19-38.2



Natural Resources, Wildlife Resources R657-43 Landowner Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30072

FILED: 06/12/2007, 21:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to landowner permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game, cougar, turkey, or bear permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the landowner to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear landowner permits, it has the potential to expand the number of licenses sold each year. However, since there is already

an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a landowner to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear landowner permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the landowner to purchase a hunting or combination license prior to applying for or obtaining any big game, cougar, turkey, or bear landowner permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsman. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for landowners wishing to purchase a landowner permit in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in purchasing landowner permits.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-43. Landowner Permits.****R657-43-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, this rule provides the standards and procedures for private landowners to obtain landowner permits for:

(a) taking buck deer within the general regional hunt boundary area where the landowner's property is located during the general deer hunt only; and

(b) taking bull elk, buck deer or buck pronghorn within a limited entry unit.

(2) In addition to this rule, any person who receives a landowner permit must abide by Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3) The intent of the general landowner buck deer permit is to provide an opportunity for landowners, lessees, or their immediate family, whose property provides habitat for deer, to purchase a general deer permit for the general regional hunt boundary area where the landowner's property is located.

(4) The intent of the limited entry landowner permit is to provide an opportunity for landowners, whose property provides habitat for deer, elk, or pronghorn, to be allocated a restricted number of permits for a limited entry bull elk, buck deer, or buck pronghorn unit, where the landowner's property is located. Allowing landowners a restricted number of permits:

(a) encourages landowners to manage their land for wildlife;

(b) compensates the landowner for providing private land as habitat for wildlife; and

(c) allows the division to increase big game numbers on specific units.

R657-43-5. Application for General Landowner Buck Deer Permits.

(1) Applications for general landowner buck deer permits are available from division offices.

(2) Only one eligible landowner or lessee may submit an application for the same parcel of land within the respective general regional hunt boundary area.

(3) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(4) Applications must include:

(a) total acres owned within the respective general regional hunt boundary area;

(b) signature of the landowner; and

(c) location of the private lands, acres owned, county and region.

(5) In cases where the landowner's or lessee's land is in more than one general regional hunt boundary area, the landowner or lessee may select one of those regions from which to receive the permit.

(6) ~~A \$5~~ a non-refundable handling fee must accompany each application.

(7) a landowner may not apply for or obtain a general landowner buck deer permit without possessing a Utah hunting or combination license.

(8) Applications will be available by January 7.

~~(8)2~~ Applications must be completed and returned to the regional division office.

~~(9)10~~ The signature on the application will serve as an affidavit certifying ownership.

R657-43-6. Application for Limited Entry Permits.

(1) Applications for limited entry landowner permits are available from division offices and from division wildlife biologists.

(2) Applications to receive limited entry landowner permits must be submitted by a landowner association for lands within the limited entry hunt unit where the private lands are located.

(3) Applications must include:

(a) total acres owned by the association within the limited entry hunting unit and a map indicating the privately owned big game habitat;

(b) signature of each of the landowners within the association including acres owned, with said signature serving as an affidavit certifying ownership;

(c) a distribution plan for the allocation of limited entry permits by the association;

(d) a copy of the association by-laws; and

(e) a ~~non-refundable~~ handling fee.

(4) The division shall, upon request of the applicant, provide assistance in preparing the application.

(5) Applications must be completed and returned to the appropriate division office by September 1 annually.

(6) The division shall forward the application and other documentation to the Regional Wildlife Advisory Councils for public review.

(7) Recommendations by the Councils will then be forwarded to the Wildlife Board for review and action.

(8) Upon approval by the Wildlife Board, a Certificate of Registration will be issued to the landowner association.

R657-43-7. General Permits and Season Dates.

(1) The following number of general landowner buck deer permits may be available to a landowner or lessee:

(a) one general landowner buck deer permit may be issued for eligible property of 640 acres; and

(b) one additional general landowner buck deer permit may be issued for each additional 640 acres of eligible property.

(c) If an individual has both owned and leased eligible property, the acreage may be combined in determining the number of permits to be issued.

(2) Permittees may select only one general landowner buck deer permit (archery, rifle or muzzleloader) as provided in the proclamation of the Wildlife Board for taking big game.

(3)(a) General landowner buck deer permits are for personal use only and may not be transferred to any other person.

(b) If the landowner or lessee is a corporation, the person eligible for the permit must be a shareholder, or immediate family member of a shareholder, designated by the corporation.

(4) Any person who is issued a general landowner buck deer permit under this rule is subject to all season dates, weapon restrictions and any other regulations as provided in the proclamation of the Wildlife Board for taking big game.

(5) The fee for a general landowner buck deer permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

(6) Nothing in this rule shall be construed to allow any person to obtain more than one general buck deer permit from any source or take more than one buck deer during any one year.

(7) Permits will be issued beginning in June, in the order that applications are received, and permits will continue to be issued until all permits for each region have been issued.

(8) to receive a general landowner buck deer permit, the eligible person must possess or obtain a Utah hunting or combination license.

R657-43-8. Limited Entry Permits and Season Dates.

(1) Only bull elk, buck deer or buck pronghorn limited entry permits may be applied for by the landowner association.

(2)(a) The division and landowner chairperson shall jointly recommend the number of permits to be issued to the landowner association.

(b) When consensus between the landowner chairperson and the division is not reached, applications shall include justification for permit numbers for review by the Wildlife Regional Advisory Councils and the Wildlife Board.

(3) Permit numbers shall fall within the herd unit management guidelines. Permit numbers will be based on:

(a) the percent of private land big game habitat within the unit that is used by wildlife; or

(b) the percentage of use by wildlife on the private lands.

(4) Landowners receiving vouchers may personally use the vouchers or reassign the vouchers to any legal hunter.

(5) All landowners who receive vouchers, and transfer the vouchers to other hunters must:

(a) allow those hunters receiving the vouchers access to their private lands for hunting; and

(b) allow the same number of public hunters with valid permits, equal to the number of vouchers transferred, to access the landowner association's private land for hunting during the appropriate limited entry bull elk, buck deer or buck pronghorn hunting season, except as provided in Subsection (6).

(6)(a) Landowners who transfer vouchers to other hunters may deny public hunters access to the landowner association's private land for hunting by requesting, through the landowner association, a variance to Subsection (5)(b) from the Wildlife Board.

(b) The requested variance must be provided by the landowner association in writing to the division 30 days prior to the appropriate Regional Advisory Council meeting scheduled to review Rule R657-5 and the Bucks, Bulls and Once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(c) The variance request must be presented by the landowner association to the appropriate local Regional Wildlife Advisory Council. The local Regional Wildlife Advisory Council shall forward a recommendation to the Wildlife Board for consideration and action.

(7)(a) Any person who is issued a limited entry landowner permit must follow the season dates, weapon restrictions and any other regulations governing the taking of big game as specified in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) to receive a limited entry landowner permit, the person designated on the voucher must possess or obtain a Utah hunting or combination license.

(8) A limited entry landowner permit authorizes the permittee to hunt within the limited entry unit where the eligible property is located.

(9) Nothing in this rule shall be construed to allow any person, including a landowner, to take more than one buck deer, one bull elk or one buck pronghorn during any one year.

KEY: wildlife, landowner permits[±], big game seasons[±]
Date of Enactment or Last Substantive Change: [~~June 4, 2004~~ August 7, 2007]
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources

R657-44

Big Game Depredation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30073

FILED: 06/12/2007, 21:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to depredation and mitigation permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game, cougar, turkey, or bear permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-16-2, 23-16-3, 13-16-3.1, 23-16-3.2, and 23-16-4

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment requires the hunter to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear mitigation permits, it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment requires a hunter to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear mitigation permits, it has the potential to expand the number of licenses purchased. However, this should have little to no

effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment requires the hunter to purchase a hunting or combination license prior to applying for or obtaining any big game, cougar, turkey, or bear mitigation permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsmen. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for hunters wishing to purchase a mitigation permit in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in purchasing mitigation permits.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-44. Big Game Depredation.

R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

- (1) the procedures, standards, requirements, and limits for assessing big game depredation; and
- (2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

- (1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.
- (2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, authorizing the landowner or lessee to take specified big game animals for personal use within a designated area.

(h) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(i) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

(a) orally to expedite a field investigation; or

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

- (A) herding;
- (B) capture and relocation;
- (C) temporary or permanent fencing; or
- (D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk; ~~or~~

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) the Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

- (a) the landowner or lessee; or
- (b) a landowner association that:
 - (i) applies in writing to the division;
 - (ii) provides a map of the association lands;
 - (iii) provides signatures of the landowners in the association;

and
(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, ~~or~~ the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A ~~big game~~ mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, ~~or~~ the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation Hunts for Buck Deer, Bull Elk or Buck Pronghorn.

(1)(a) Buck deer, bull elk, or buck pronghorn depredation hunts, that are not published in the proclamation of the Wildlife Board for taking big game, may be held.

(b) Buck deer, bull elk, or buck pronghorn depredation hunts may be held when the buck deer, bull elk, or buck pronghorn are:

- (i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;
- (ii) a significant public safety hazard; or
- (iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing [a] an unfilled limited entry buck deer, bull elk, or buck pronghorn permit for that limited entry unit;

(b) hunters from the alternate drawing list for that limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(4) Post-season depredation hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(5) A person may participate in the depredation hunter pool, for depredation hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, or buck pronghorn depredation hunt must possess an unfilled, valid, limited entry buck deer, bull elk, or buck pronghorn permit for the species to be hunted, or must purchase the appropriate depredation permit before participating in the depredation hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, or buck pronghorn harvested during a depredation hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation permits for buck deer, bull elk, or buck pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, or buck pronghorn in one calendar year.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the permit.

KEY: wildlife, big game, depredation

Date of Enactment or Last Substantive Amendment: ~~May 8, 2007~~ August 7, 2007

Notice of Continuation: July 3, 2002

Authorizing, and Implemented or Interpreted Law: 23-16-2; 23-16-3; 23-16-3.5



Natural Resources, Wildlife Resources
R657-54
Taking Wild Turkey

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30074

FILED: 06/12/2007, 21:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the wild turkey program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a turkey permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B. 161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining turkey permits it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR)

determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: Since this amendment requires a sportsman to purchase a hunting or combination license prior to applying for or obtaining turkey permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment requires the sportsmen to purchase a hunting or combination license prior to applying for or obtaining any turkey permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsmen. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents wishing to hunt turkey in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting turkey.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-54. Taking Wild Turkey.

R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-3. Application Procedure for Wild Turkey.

(1)(a) Applications are available from Division offices, license agents, and the Division's Internet address. Applications must be submitted by the date prescribed in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) Residents and nonresidents may apply.

(2)(a) Group applications for wild turkey will not be accepted.

(b) Applicants may select up to three hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(c) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

~~(d)~~ (d) To apply for a resident permit, a person must be a resident at the time of purchase.

~~(e)~~ (e) The posting date of the drawing shall be considered the purchase date of a permit.

(3)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(4)(a) Applications completed incorrectly or received after the date prescribed in the Turkey Proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(5)(a) Late applications, received by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) reevaluation of Division and third-party errors.

(b) The handling fee will be used to process the late application. Any Utah hunting or combination license fees paid will not be refunded and license will be issued. Any permit fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey shall not be processed and shall be returned to the applicant.

(d) A turkey permit allows a person using any legal weapon as provided in Section R657-54-7 to take one bearded turkey within the area and season specified on the permit.

(6) Each application must include:

- (a) the nonrefundable handling fee; ~~and~~
- (b) the limited entry turkey permit fee; and
- (c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.

(7) Applicants will be notified by mail or e-mail of drawing results. The drawing results will be posted on the Division's Internet address by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(8) Any permits remaining after the drawing are available on the date published in the Turkey Proclamation on a first-come, first-served basis from division offices and participating online license agents.

(9)(a) An applicant may withdraw their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the Turkey proclamation of the Wildlife Board for taking wild turkey.

(c) Handling fees and hunting or combination license fees will not be refunded.

(10)(a) An applicant may amend their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

R657-54-6. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-54-3.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(b) Landowner permit applications will not be accepted through the Internet.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-22. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

KEY: wildlife, wild turkey, game laws

Date of Enactment or Last Substantive Amendment: ~~December 12, 2006~~ August 7, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources

R657-55

Wildlife Convention Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30075

FILED: 06/12/2007, 21:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to convention permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) require the hunter to possess or obtain a valid Utah hunting or combination license prior to applying for or obtaining a big game, cougar, turkey, or bear permit, pursuant to S.B. 161 passed during the 2007 general session of the Utah State Legislature; 2) change the name of the small game license to a hunting license pursuant to S.B. 161; and 3) make technical corrections for consistency and accuracy. (DAR NOTE: S.B.

161 (2007) is found at Chapter 187, Laws of Utah 2007, and is effective 07/01/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment requires the applicant to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear permits, it has the potential to expand the number of licenses sold each year. However, since there is already an electronic system in place for the issuing of licenses, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: Since this amendment requires the applicant to purchase a hunting or combination license prior to applying for or obtaining big game, cougar, turkey, or bear permits, it has the potential to expand the number of licenses purchased. However, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment requires the applicant to purchase a hunting or combination license prior to applying for or obtaining any big game, cougar, turkey, or bear permits. Since this amendment requires the purchase of a license, it has the potential to increase the cost to each sportsmen. Therefore, the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will create additional costs for residents and nonresidents wishing to hunt in Utah. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in hunting in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Department of Natural Resources, Wildlife Resources.

R657-55. Wildlife Convention Permits.

R657-55-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits and the corresponding wildlife convention permit vouchers are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities.

(3) The selected conservation organization shall distribute the wildlife convention permit vouchers through a drawing at a convention held in Utah.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in 2007 through 2011 to one qualified conservation organization.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit voucher drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to possess a current Utah hunting or combination license before allowing them to apply for a convention permit.

(b) distribute the wildlife convention permit vouchers by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(~~b~~)c allow applicants to apply for the wildlife convention permit vouchers without purchasing admission to the wildlife convention;

(~~e~~)d notify the division of the recipient of each wildlife convention permit voucher within 10 days of the recipient's selection;

(~~d~~)e maintain records demonstrating that the drawing was conducted fairly; and

(~~e~~)f submit to wildlife convention permit series audits by a division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated recipient of the wildlife convention permit voucher upon the recipient being found eligible for the permit and the payment of the appropriate permit fee.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permit vouchers at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed \$5 per application submitted at the convention.

(3) Applicants must be present in person at the wildlife convention to apply for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit voucher to the conservation organization for each wildlife convention permit to be issued.

(2) The conservation organization must provide a wildlife convention permit voucher to each successful applicant, except as otherwise provided in this rule.

(3) Successful applicants must provide the wildlife convention permit voucher to the division and, if legally eligible to hunt in Utah, will be issued the designated wildlife convention permit upon payment of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(4) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(5) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(6)(a) Any successful applicant who fails to redeem their wildlife convention permit voucher by the dates provided in Subsection (b) annually, will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(b) A wildlife convention permit voucher must be redeemed by:

- (i) November 15 for cougar;
- (ii) February 1 for wild turkey and bear; and
- (iii) August 1 for deer, elk, pronghorn, moose, bison, rocky mountain goat, desert bighorn sheep, and rocky mountain bighorn sheep.

KEY: wildlife, wildlife permits

Date of Enactment or Last Substantive Change: ~~June 1, 2005~~ August 7, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19



Natural Resources, Wildlife Resources
R657-56
 Recreational Lease of Private Lands for
 Free Public Walk-in Access

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30078

FILED: 06/12/2007, 22:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being proposed pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input. The purpose of this rule is to provide the standards, procedures and requirements necessary to administer a walk-in access program to compensate private landowners for a recreational lease of their property to allow free public walk-in access for fishing, hunting, and trapping.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) expand the program to statewide; 2) define contiguous block of land; 3) pro-rate lease agreement compensation fees for a landowner who withdraws from the program early; 4) create an advisory committee; 5) establish term lengths for committee members; and 6) make technical corrections.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18, 23-14-19, and 57-14-1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This is a pilot program and the associated costs have been funded with monies from existing funding sources. Therefore, the Division of Wildlife Resource's (DWR) determines that this rule does not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: Private landowners will be compensated by DWR through a recreational lease but it is not anticipated that it will produce a cost or savings for them. This rule does not impose any additional requirements on other persons, and because this rule provides for free public access, DWR has determined that this rule does not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is proposed to compensate private landowners for allowing free walk-in access to the public and does not impose any cost requirements for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-56. Recreational Lease of Private Lands for Free Public Walk-in Access.****R657-56-1. Purpose and Authority.**

Under the authority of Sections 23-14-~~3(2)~~-18, and 23-14-19, this rule provides the procedures, standards, and requirements to administer a ~~[three-year]~~ walk-in access ~~[pilot]~~ program in the ~~[Northern Region]~~ State of Utah to compensate private landowners for a recreational lease of their property for allowing free public walk-in access to fish, hunt, or trap.

R657-56-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

~~[(a) "Northern Region" for the purposes of this rule, means private property located within all of, or portions of, the following counties: Box Elder, Cache, Davis, Rich, Morgan, Tooele, Summit, Salt Lake, Duchesne, Daggett and Wasatch counties. The boundary begins at the Utah Nevada state line and I-80 at Wendover, east along I-80 to US-40; south along US-40 to SR-32; east along SR-32 to SR-35 at Francis; east along SR-35 to Soapstone Basin Road (USFS Road 037); north along Soapstone Basin Road (USFS 037) to SR-150; northeast along SR-150 to the Summit Duchesne county line (summit of the Uinta Mountains) to the Wasatch Ashley National Forest boundary; north along the Wasatch Ashley National Forest boundary to USFS Road 058; east along USFS 058 to USFS Road 221 (Birch Creek); north along USFS Road 221 to the Utah-Wyoming state line; west and north along the Utah-Wyoming state line to the Utah-Idaho state line; west along the Utah-Idaho state line to the Utah-Nevada state line; south along the Utah-Nevada state line to I-80 at Wendover.~~

~~—][(b)a] "Private landowner" means any individual, partnership, corporation, or association that possesses the legal right on private property to grant a recreational lease.~~

~~[(e)b] "Recreational lease activities" means recreation limited to fishing, hunting or trapping as provided in the recreational lease agreement.~~

~~[(d)c] "WIA" means walk-in access.~~

~~[(e)d] "WIFA" means walk-in fishing access, which provides free public access to fish waters located on private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIFA recreational lease agreement.~~

~~[(f)e] "WIHA" means walk-in hunting access, which provides free public access to hunt private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIHA recreational lease agreement.~~

~~(f) "Contiguous block" means a polygon of land that is connected as a single mass.~~

R657-56-3. Walk-In Access Enrollment Procedures.

(1) A private landowner with eligible property ~~[located within the Northern Region]~~ may participate in the WIA program.

(2) A private landowner interested in participating in the WIA program must submit an enrollment form to the ~~[Northern Region]~~ appropriate division office by March 1, and provide:

- (a) evidence of property ownership, or if leasing the private property a copy of the lease agreement; and
- (b) the private landowner's signature.

(3) Enrollment forms are available at the ~~[Northern Region]~~ appropriate division office or through the division's web site.

R657-56-5. Walk-In Hunting Access Program Requirements.

(1) Private property enrolled in the WIHA Program must provide suitable wildlife habitat to support the recreational lease activity described in the WIHA recreational lease agreement, and:

(a) contain ~~[a minimum of]~~ no less than an 80 acre contiguous [aeres] block of land;

(b) contain no less than a ~~[minimum of]~~ 40 acre contiguous [aeres] block of wetland or riparian land; or

(c) provide an access corridor to comparable tracts of isolated public land open to free public hunting or trapping.

(2)(a) Division personnel shall evaluate proposed WIHA property to determine if the property provides suitable wildlife habitat and wildlife for the designated recreational lease activity.

(b) If the property is approved ~~[as suitable wildlife habitat]~~ for the designated recreational lease activity, the division and private landowner may enter into the WIHA recreational lease agreement as provided in Section R657-56-4.

R657-56-6. Walk-In Fishing Access Requirements.

(1) Private property enrolled in the WIFA Program must provide suitable fishing waters and fish to support the recreational lease activity described in the ~~[WIFA]~~ WIFA recreational lease agreement, and:

(a) contain a minimum 0.25 miles of stream or river;

(b) contain a minimum 5 acres of pond; or

(c) the property provides an access corridor to comparable fishing waters on isolated public land open to ~~[free]~~ public fishing.

(2)(a) Division personnel shall evaluate proposed WIFA property to determine if the property provides suitable fishing waters and fish.

(b) If the property is approved for the designated recreational lease activity, the division and private landowner may enter into the WIFA recreational lease agreement as provided in Section R657-56-4.

R657-56-10. Termination of Walk-In Access Recreational Lease Agreement.

(1) The WIA recreational lease agreement may be:

(a) terminated for any reason by either party upon 30 days written notice; or

(b) amended at any time upon written agreement by the landowner and the division.

(2) If a WIA recreational lease agreement is terminated as provided in Subsection (1)(a), prior to the ending date specified in the recreational lease agreement, the compensation payment fee shall be prorated based upon the recreational lease activity provided and the number of days that access was provided.

(3) Restriction of public use by the landowner of the private property enrolled in the WIA program in violation of the recreational lease agreement may void all or a portion of the WIA recreational lease agreement.

(4) Any change in private landownership of enrolled WIA property may terminate the WIA recreational lease agreement.

(5) Misrepresentation of enrolled private property in the WIA program shall terminate the WIA recreational lease agreement.

R657-56-11. Liability Protection for Walk-In Access Private Landowner.

Landowner liability may be limited when free public access is allowed on private property enrolled in the WIA program for the purpose of any recreational lease activities as provided in ~~Section 57-14.~~Title 57, Chapter 14 of the Utah Code.

R657-56-15. Walk-In Access Advisory Committee.

(1) A WIA Advisory Committee shall be created consisting of five members nominated by the ~~Northern Region Supervisor~~five division Supervisors, and approved by the Director.

- (2) The committee shall include:
 - (a) two sportsmen representatives;
 - (b) two agricultural representatives;
 - (c) one elected official; and
 - (d) the division's Wildlife Section Chief, or designee.

(3) The committee shall be chaired by the Wildlife Section Chief, or designee, who shall be a non-voting member.

- (4) The committee will:
 - (a) hear complaints dealing with fair and equitable treatment of anglers, hunters, or trappers on enrolled WIA property;
 - (b) hear complaints dealing with fair and equitable treatment of WIA private landowners; and
 - (c) make advisory recommendations to the Director.

(5) The Wildlife Section Chief shall determine the agenda, time, and location of the WIA Advisory Committee meetings.

(6) The director may mitigate or resolve issues dealing with complaints.

~~[(7) Appointment terms for committee members will expire at the end of the three-year pilot WIA Program.]~~(7) Members of the advisory Committee shall serve a term of four years, except members may be appointed for a term of two years to ensure that the term of office are staggered.

(a) The Wildlife Section Chief is not subject to a term limitation.

KEY: wildlife, private landowners, public access
Date of Enactment or Last Substantive Change: ~~November 16, 2005~~August 7, 2007
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 57-14-1



Public Education Job Enhancement
 Program, Job Enhancement Committee
R690-100
 Public Education Job Enhancement
 Program Participant Eligibility and
 Requirements

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 30099
 FILED: 06/14/2007, 15:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2007 Legislature in H.B. 240 expanded the education positions that qualify for cash awards and scholarships under the Public Education Job Enhancement Program. This rule is amended to provide for the 2007 legislative changes. (DAR NOTE: H.B. 240 (2007) is found at Chapter 115, Laws of Utah 2007, and is effective as of 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The amendments add new positions to the "Critical areas of educator need" definition and a new requirement for Advancement Awards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1a-602(5)

- ANTICIPATED COST OR SAVINGS TO:**
- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Legislative funding is appropriated for the program and will be appropriated annually, subject to future budget constraints.
 - ❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments to this rule add additional positions for participation in the program and funding is provided.
 - ❖ **OTHER PERSONS:** There may be savings to individual teachers as a result of these amendments. Occupational therapists are eligible and may receive cash awards or scholarships and teachers in grades four through six with mathematics endorsements are eligible and may receive scholarships. Savings for individuals are too speculative and case-specific to estimate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to the rule provide for additional positions for program participation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. John Sutherland, Committee Chair

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC EDUCATION JOB ENHANCEMENT PROGRAM
 JOB ENHANCEMENT COMMITTEE
 250 E 500 S
 SALT LAKE CITY UT 84414, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Clara Walters at the above address, by phone at 801-538-7616, by FAX at 801-538-7973, or by Internet E-mail at clara.walters@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2007

AUTHORIZED BY: John Sutherland, Chair, Job Enhancement Committee

R690. Public Education Job Enhancement Program, Job Enhancement Committee.

R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.

R690-100-1. Definitions.

A. "Advancement Award/scholarship recipient" means a scholarship to an educator qualified under Sections 53A-1a-601 (1) and (2) (a) and (b). The scholarship may be used for:

(1) training in subject areas designated in Section 53A-1a-601(1); and

(2) tuition costs only as designated in Section 53A-1a-601(2)(b) for a master's degree, teaching endorsement, or approved graduate program including National Board Certification.

B. "Contract" means a binding agreement signed and agreed to by the recipient, the PEJEP Committee and USOE under 53A-1a-602(3)(c); applications are available through the USOE and online through the USOE website at www.schools.utah.gov.

C. "Critical areas of educator need" means secondary school teachers with expertise in mathematics, physics, chemistry, physical science, learning technology, or information technology ~~and~~ PreK-12 special education teachers, educators seeking math endorsements in fourth, fifth, and sixth grade with a Level 1 or Level 2 license with an elementary or secondary area of concentration, and occupational therapists.

D. "Information technology" for purposes of this rule means courses in information support and services, interactive media, network systems and programming, and software development as listed under information technology education in career and technical education (CTE) on the USOE website.

E. "Learning technology" for the purpose of this rule means a degree/endorsement earned to implement use of technology in classrooms by secondary school teachers in the critical areas of educator need identified under R690-100-1C.

F. "Letter of authorization" under Section 53A-1a-601(3) means a designation given to an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements for the course(s) he teaches, who is employed by a school district, who has an educator license under R277-502.

G. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

H. "Opportunity Award/signing bonus/cash award recipient" means a cash award paid in two installments to qualified educators under 53A-1a-601(2) (c) and (3)(a) and (b).

I. "Public Education Job Enhancement Program Committee (Committee)" means the committee designated under Section 53A-1a-602.

J. "Public Education Job Enhancement Program (PEJEP)" means a program authorized under Section 53A-1a-601.

K. "Special education teacher" means an educator who teaches at least three classes (or fifty percent of the school day) of primarily

PreK-12 special education students or whose contract assignment is designated by the district as SPECIAL EDUCATION. Special education teacher may also mean speech and language pathologists and psychologists and special education educators teaching grade 12+ in a high school.

L. "Technology training" for the purpose of this rule means professional development training to public school superintendents, administrators, and principals in the effective use of technology in public schools.

M. "USOE" means the Utah State Office of Education.

R690-100-2. Authority and Purpose for Opportunity and Advancement Awards.

A. The rule is authorized under Section 53A-1a-602(5) which requires the Committee to make a rule establishing policies and procedures for:

(1) designating the recipients and offering scholarships and cash awards from PEJEP funding;

(2) timelines for the submission and approval of applications;

(3) the distribution of the awards and scholarships; and

(4) monitoring educator progress and compliance with the law and this rule.

B. The purpose of this rule is to provide policies and procedures for participation in the Public Education Job Enhancement Program.

R690-100-6. Miscellaneous Provisions or Requirements for the Opportunity and Advancement Awards.

A. In any given school year, a teacher shall not receive both an Opportunity Award and an Advancement Award and shall not receive two Opportunity awards concurrently.

B. Recipients of the Opportunity Award and Advancement Award may not apply for a second award until the consecutive four year teaching commitment has been fulfilled.

C. Opportunity and Advancement award educators may take less than a full-time course load in the areas identified in 53A-1a-601(1), if student demand is not sufficient for a full-time assignment in those subject areas.

D. If the Opportunity or Advancement Award recipient should die before the conditions or repayment of the award is satisfied, the entire commitment or balance shall be waived.

E. The educator shall be teaching in the critical areas of educator need identified under R690-100-1C,D,and E, to apply for a PEJEP scholarship toward any learning technology degree, endorsement, or advanced degree.

F. Advancement Award Recipients taking 9 credit hours during summer months (forgoing employment during that time) may receive a \$6,000 summer stipend; summer stipends shall be prorated for educators in regulated programs and those recipients may receive \$2,000 per 3 credit hour, up to \$6,000.

G. Endorsement caps shall be commensurate with increased tuition costs for the specific endorsement; and

H. Endorsement program recipients may receive only one summer stipend of \$6,000 per 9 credit hours.

I. Teachers who have their assignment changed which takes them out of their classroom teaching in the PEJEP content areas, must submit a petition to the Committee for potential waiver of penalties associated with the change.

J. The consecutive four year teaching commitment may be met by educators who are promoted, assigned, or advised to change their teaching assignment and work within the district or state in a similar

role for which the Opportunity Award or Advancement Award was made, following Committee approval.

K. Applicants are not eligible for Advancement Awards if the individuals are in their last semester of their degree or endorsement programs or if they have completed their degree, endorsement, or advanced degree program.

KEY: scholarships, awards, educators

Date of Enactment or Last Substantive Amendment: ~~December 23, 2006~~ 2007

Authorizing, and Implemented or Interpreted Law: 53A-1a-602(5)

◆ ————— ◆

Workforce Services, Unemployment Insurance **R994-315-103** Reporting Formats

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30106

FILED: 06/15/2007, 18:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to allow for electronic reporting.

SUMMARY OF THE RULE OR CHANGE: The Department allows new hire registry reporting via electronic data entry or file transfer. This amendment updates the rule to reflect this.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs of savings to local government.
- ❖ **OTHER PERSONS:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Kristen Cox, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2007

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-315. Centralized New Hire Registry Reporting.

R994-315-103. Reporting Formats.

Employers may submit information by paper, ~~or by~~ magnetic tape, cartridge, or diskette or electronically. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)
(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

(3) Electronic Media

Employers may submit information by Internet on-line data entry or Internet electronic file transfer. Electronic Media must be submitted according to specifications approved by the Department.

KEY: new hire registry

Date of Enactment or Last Substantive Amendment: ~~April 21, 2000~~ 2007

Notice of Continuation: June 11, 2003

Authorizing, and Implemented or Interpreted Law: 35A-7-101 et seq.; 42 U.S.C. 654(a) et seq.; Pub. L. No. 104-193

Workforce Services, Unemployment
Insurance
R994-405-3
Professional Employment
Organizations (PEO)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30104

FILED: 06/15/2007, 17:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify provisions based on comments received after the last amendment.

SUMMARY OF THE RULE OR CHANGE: This rule relates to Professional Employment Organizations (PEO). The Department filed a proposed amendment on 04/20/2007. Based on the comments received, two new provisions are added which explain that a letter is not required if the PEO does not intend to continue employment and that if a claimant does not report back to the PEO for a new assignment after receipt of the letter it will be considered a quit. It was the Department's intent to treat cases this way but based on comments received it was not clear. This proposed amendment makes the rule more clear and hopefully satisfies the concerns from the comments. It is the Department's intent to make the amendment filed on 04/20/2007 effective on 08/07/2007, and this amendment effective 08/08/2007.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs of savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Kristen Cox, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2007

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-405. Ineligibility for Benefits.

R994-405-3 Professional Employment Organizations (PEO).

(1) PEO is defined in R994-202-106 and must be registered pursuant to Sections 58-59-101 et seq. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as ~~required~~referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice ~~required~~referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice

is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

KEY: unemployment compensation, employment, employee's rights, employee termination

Date of Enactment or Last Substantive Amendment: 2007

Notice of Continuation: June 27, 2002

Authorizing, and Implemented or Interpreted Law: 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405

◆ ————— ◆

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text between paragraphs (· · · · ·) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends July 31, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through October 29, 2007, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Real Estate
R162-4-1
Records and Copies of Documents

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29739
 Filed: 06/05/2007, 16:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Since many transactions now close electronically with no in-person "closing" or "settlement" taking place, the Utah Real Estate Commission has decided to delete the requirement in existing rule that the principal broker or his authorized representative must attend all closings.

SUMMARY OF THE RULE OR CHANGE: The first sentence of Subsection R162-4-1(4.1.4.2) is deleted. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the April 15, 2007, issue of the Utah State Bulletin, on page 22. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2-5.5(1)(a)(vi) and (viii)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--Whether a broker physically attends the closing of a real estate transaction or reviews the settlement documents for accuracy has no impact on the state budget.
- ❖ **LOCAL GOVERNMENTS:** None--Local governments do not act as real estate brokers and therefore, the rules regarding the conduct of real estate brokers have no impact on local governments.
- ❖ **OTHER PERSONS:** The only persons who are affected by whether or not a real estate brokerage representative physically attends a settlement meeting, as opposed to reviewing the settlement documents for accuracy, are the parties to a real estate transaction and the real estate licensees who represent them in the transaction. It will neither cost nor save the parties to a real estate transaction any money if their brokerage representative reviews settlement documents transmitted to the representative electronically instead of physically attending a closing. This is so because real estate brokerages are paid a percentage commission for their services instead of being paid separately for each activity involved in a transaction. This rule change may save real estate brokerages a very small amount of travel expenses since they will be allowed to review documents transmitted to them electronically instead of physically attending a settlement to review the documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only affected persons are real estate brokerage representatives. This rule change will not cost them any money and may actually save them a small amount of travel expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this change to proposed rules other than those discussed in the rule summary. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-4. Office Procedures - Real Estate Principal Brokerage.

R162-4-1. Records and Copies of Documents.

4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed.

4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records.

4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage

trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file.

4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed.

4.1.4. Settlement Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed settlement statement of all their respective accounts showing receipts and disbursement.

4.1.4.1. Settlement statements for all real estate transactions in which a real estate principal broker participates must show the following: the date of settlement; the total purchase price of the property; an itemization of all adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the same as the date of settlement. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits as pertain to each party.

4.1.4.2. ~~[The principal broker or his authorized representative must attend all settlements.]~~ Regardless of who closes the transaction, a principal broker is responsible for the content and accuracy of all settlement statements prepared for the signature of the party with whom the principal broker has an agency relationship in that transaction.

4.1.4.3. A principal broker who closes a transaction must show

proof of delivery of the settlement statement(s) to the buyer and seller. Signatures of the buyer and seller on the file copy of the settlement statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement.

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply:

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-2.3.2. shall apply.

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of his choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to disposition or until a court of competent jurisdiction issues an order relative to disposition.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: 2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Risk Management

R37-1

Risk Management General Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30046
FILED: 06/08/2007, 15:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the statutory authority granted to the Risk Manager under Subsection 63A-4-101(2) to recommend to the Executive Director of the Department of Administrative Services that rules be promulgated to address underwriting, other standards and other actions or requirements necessary to carry out the duties of the division. The Executive Director of the Department of Administrative Services is empowered by Subsection 63A-1-105.5 to enact administrative rules for the various divisions of the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides client agencies (state, school districts, and higher education) with the specific requirements and expectations of the Division of Risk Management (Risk) with regard to coverage and other associated activities of the division. The rule also spells out what the client may expect from Risk in the terms of services and what Risk requires of client agencies. The rule provides specific guidance to clients that is not found in the broad statutes that establish Risk Management or which outline how defense and indemnification can be obtained. The rule needs

to be continued in order to assist both Risk Management in providing the services required by statute and to assist agencies to know what they can expect from Risk.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Stephen Hewlett at the above address, by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at SHEWLETT@utah.gov

AUTHORIZED BY: Roger Livingston, Director

EFFECTIVE: 06/08/2007



Administrative Services, Risk Management

R37-2

Risk Management State Workers' Compensation Insurance Administration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30047
FILED: 06/08/2007, 16:00

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the statutory authority granted to the Risk Manager under Subsection 63A-4-101(2) to recommend to the Executive

Director of the Department of Administrative Services that rules be promulgated to address underwriting, other standards and other actions or requirements necessary to carry out the duties of the division. The Executive Director of the Department of Administrative Services is empowered by Subsection 63A-1-105.5 to enact administrative rules for the various divisions of the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides client agencies (state, school districts, and higher education) with the specific requirements and expectations of the Division of Risk Management (Risk) with regard to coverage and other associated activities of the division. The rule also spells out what the client may expect from Risk in the terms of services and what Risk requires of client agencies. The rule provides specific guidance to clients that is not found in the broad statutes that establish Risk Management or which outline how defense and indemnification can be obtained. The rule needs to be continued in order to assist both Risk Management in providing the services required by statute and to assist agencies to know what they can expect from Risk.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Stephen Hewlett at the above address, by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at SHEWLETT@utah.gov

AUTHORIZED BY: Roger Livingston, Director

EFFECTIVE: 06/08/2007

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**Administrative Services, Risk
Management
R37-3
Risk Management Adjudicative
Proceedings**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30048
FILED: 06/08/2007, 16:05

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the statutory authority granted to the Risk Manager under Subsection 63A-4-101(2) to recommend to the Executive Director of the Department of Administrative Services that rules be promulgated to address underwriting, other standards and other actions or requirements necessary to carry out the duties of the division. The Executive Director of the Department of Administrative Services is empowered by Subsection 63A-1-105.5 to enact administrative rules for the various divisions of the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides client agencies (state, school districts, and higher education) with the specific requirements and expectations of the Division of Risk Management (Risk) with regard to coverage and other associated activities of the division. The rule also spells out what the client may expect from Risk in the terms of services and what Risk requires of client agencies. The rule provides specific guidance to clients that is not found in the broad statutes that establish Risk Management or which outline how defense and indemnification can be obtained. The rule needs to be continued in order to assist both Risk Management in providing the services required by statute and to assist agencies to know what they can expect from Risk.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Stephen Hewlett at the above address, by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at SHEWLETT@utah.gov

AUTHORIZED BY: Roger Livingston, Director

EFFECTIVE: 06/08/2007

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Agriculture and Food, Animal Industry
R58-8

Testing and Vaccination of Bovine
Livestock for Brucellosis Control

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30041
FILED: 06/07/2007, 15:45

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-31-16.5(8) allows rulemaking for enforcement of Brucellosis laws.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no written comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is no reason or justification for continuing this rule. The rule will remain in place until a repeal can be put through the process. (DAR NOTE: See the proposed repeal of Rule R58-8 under DAR No. 30045 in this issue, July 1, 2007, of the Bulletin.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Earl Rogers, or Terry Menlove at the above address, by phone at 801-538-7103, 801-538-7162, or 801-538-7166, by FAX at 801-538-7126, 801-538-7169, or 801-538-7169, or by Internet E-mail at kmathews@utah.gov, erogers@utah.gov, or tmenlove@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 06/07/2007

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Attorney General, Administration
R105-2
Records Access and Management

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30037
FILED: 06/05/2007, 14:26

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsections 63-2-204(2)(d) and 63-2-904(2). The first subsection referenced allows a governmental entity to make rules in accordance with Title 63, Chapter 46a (Utah Administrative Rulemaking Act), specifying where and to whom requests for access shall be directed. The second subsection allows a governmental entity that includes divisions to specify at which level the requirements specified in this chapter shall be undertaken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is critical for the public to understand where requests for access should be directed. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ATTORNEY GENERAL
ADMINISTRATION
Room E320 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2320, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Geary at the above address, by phone at 801-366-0572, by FAX at 801-366-0352, or by Internet E-mail at dgeary@utah.gov

AUTHORIZED BY: Ray Hintze, Chief Civil Deputy

EFFECTIVE: 06/05/2007

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Commerce, Consumer Protection
R152-34
Postsecondary Proprietary School Act
Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30101
FILED: 06/15/2007, 09:06

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is adopted pursuant to the rulewriting authority granted to the Division pursuant to Section 13-2-5, which provides that the Division may issue rules to administer and enforce the chapters listed in Section 13-2-1, including the Utah Postsecondary Proprietary School Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2004, the Division increased the surety amounts required for those who operate postsecondary proprietary schools. The Division received one written comment expressing opposition to the increased surety amounts.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets out the necessary framework for those who operate or attend postsecondary proprietary schools in Utah. The need for that framework continues to exist. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
CONSUMER PROTECTION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@utah.gov

AUTHORIZED BY: Kevin V Olsen, Director

EFFECTIVE: 06/15/2007

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Community and Culture, Library
R223-1
Adjudicative Procedures

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30079
FILED: 06/13/2007, 11:58

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In the 1987 General Session of the State Legislature, Subsection 63-46b-4(2) was passed.

It prescribed that "all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter." The statute required action if the agency chose not to have its adjudicative proceedings conducted formally.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or verbal comments have been received by the State Library Division regarding Rule R223-1.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R223-1 was adopted by the State Library Division in 1988, in direct response to the State Legislature's action the previous year in passing Section 63-46b-4. No circumstances relevant to the rule or the reasons for its original adoption have changed in the interim. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMUNITY AND CULTURE
LIBRARY
Room A
250 N 1950 W
SALT LAKE CITY UT 84116-7901, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas Abrams at the above address, by phone at 801-715-6747, by FAX at 801-715-6767, or by Internet E-mail at dabrams@utah.gov

AUTHORIZED BY: Donna J Morris, Director

EFFECTIVE: 06/13/2007

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Corrections, Administration
R251-401
Supervision Fees

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30040
FILED: 06/07/2007, 07:42

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 64-13-21 provides the authority for this rule. That section directs the Department of Corrections to establish standards for the supervision of offenders specifically under Subsection 64-13-21(1)(b)). These standards are to be established by administrative rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because it provides the standards for implementing Section 64-13-21, and details a \$30 Supervision Fee payable by offenders under the supervision of the Utah Department of Corrections, and the conditions under which the fee may be waived.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

AUTHORIZED BY: Thomas E. Patterson, Executive Director

EFFECTIVE: 06/07/2007



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-310
Medicaid Primary Care Network
Demonstration Waiver

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30081
FILED: 06/13/2007, 14:17

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to enact administrative rules to implement Medicaid programs. Section 26-1-5 authorizes the Department to adopt, amend, or rescind rules as necessary to carry out the provisions of this title. Section 1115 of the Social Security Act authorizes the Division to establish waiver programs to provide services not otherwise available to Medicaid clients. The Primary Care Network (PCN) Demonstration Waiver is allowed under Section 1115 of the Social Security Act, which the Department implements under these statutes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments from PCN clients indicate that they wish PCN services to continue.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it establishes the Medicaid PCN Demonstration Waiver. The rule also establishes applicant and enrollee rights and responsibilities, eligibility, enrollment, and termination requirements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Melissa Frost at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at mlfrost@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 06/13/2007



Human Resource Management,
Administration
R477-1
Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30051
FILED: 06/09/2007, 11:04

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-6(1)(d) gives the Department of Human Resource Management (DHRM) broad powers within the Administrative Rulemaking Act to "...adopt rules for personnel management...." DHRM has opted to use a format similar to the Utah Code in that definitions are treated in a separate section for quick reference rather than in the text of the rules unless it is clearer for the non-expert reader to have the definition within the text.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The definitions contained in this rule support all other DHRM rules. Amendments to these definitions are driven almost exclusively by amendments to other DHRM rules and therefore come mostly from within DHRM. Within the previous five years however, two written requests were received by human resource offices within agencies of the executive branch. One came from the human resource staff within the Department of Human Services (DHS) to amend the definition of "At Will Employee". It was suggested that the definition be simplified to include only employees who did not have career service status for whatever reason. This suggestion was accepted and incorporated into the rules. The second request came from the human resource staff within the Department of Health to amend the definition of "Excess Hours" to exclude sick leave and compensatory time for employees exempt from the Fair Labor Standards Act (FLSA) in the computation of excess hours.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM rules can be complex and involved, especially for the non-expert reader. Dedicating one of these rules to the definition of commonly used terms can be a great assist to understanding and terms are easier to look up. Therefore, this rule should be continued. The recommendation from DHS to exclude sick leave and compensatory time from the definition of "excess hours" was not accepted because it would restrict the flexibility of local managers to manage employees use of time and leave according to the employees situation and needs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Lyle Almond at the above address, by phone at 801-538-3391, by FAX at 801538-3081, or by Internet E-mail at lalmond@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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**Human Resource Management,
Administration
R477-2
Administration**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30049
FILED: 06/09/2007, 11:03

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule of the Department of Human Resource Management (DHRM) governs applicability of rules, compliance, record keeping and information, fair employment practice, and the Quality Service Award. Statutory authority for this rule is found in several sections of the Utah Code. Subsection 63-2-204(2) gives government entities authority to write rules governing requests for information under the Government Records and Management Act, Title 63, Chapter 2. Section 67-19-6 gives DHRM broad rulemaking authority for the human resource management system. Subsection 67-19-18(3) gives DHRM authority to write rules governing the procedural and documentary requirements for disciplinary matters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two requests were received in the previous five years to amend this rule, both from human resource staff within agencies of the executive branch of state government. Staff from the Department of Human Services requested that the results of drug testing not be included in the employee medical file. After considerable research, DHRM deleted this and fitness for duty evaluations from the rule after concluding that this was not required by state or federal law. Staff from the Department of Transportation (DOT) requested DHRM to review all the items required to be placed in the employee's permanent personnel file because of the high administrative cost to maintain these files.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains requirements for state compliance with: federal laws governing discrimination and equal employment opportunity and Section 67-19-4; record keeping for state employees under the Personnel Management Act in Subsections 67-19-18(5) and 67-19-18(3); and the Government Records Access and Management Act and the requirements of the Nepotism

Act, Section 52-3-1. Therefore, this rule should be continued. This rule also recognizes the joint role of DHRM, the Division of Finance, and the Governor's Office of Planning and Budget to monitor and control personnel service expenditures for the state. The rule was written with input and consent from all three entities. DHRM staff reviewed each item included in the personnel file as requested by DOT and concluded that there is a valid legal reason to have each item identified in the rule in the file and no changes were made.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 Room 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Lyle Almond at the above address, by phone at 801-538-3391, by FAX at 801538-3081, or by Internet E-mail at lalmond@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007



**Human Resource Management,
 Administration
 R477-3
 Classification**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 30058
 FILED: 06/09/2007, 11:08

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-12(3) charges the Department of Human Resource Management (DHRM) with responsibility for the maintenance of a state classification system. Section 67-19-31 provides for a classification grievance process. DHRM employees rules are written under the broad rulemaking power granted in Section 67-19-6 to bring administrative and legal consistency to these two processes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Human resource staff from the Department of Human Services (DHS) requested several amendments to this rule concerning the conduct of classification studies and classification grievances. It was

requested that agency human resource staff be allowed to conduct classification studies under the authority of the delegation agreements in place at the time of the request. DHRM agreed and amended the rule accordingly. DHS also requested that an agency be allowed to grieve a classification decision from DHRM. DHRM agreed and incorporated this into the rule. DHS requested that the three-month settling period after reorganization be eliminated.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 67-19-8, Functions of department (DHRM) not to be delegated, makes the design and administration of the classification system the exclusive domain of DHRM. Therefore, this rule should be continued. The three-month time frame is designated in rule to allow employees time to assimilate new duties into their work regimen. DHRM did not make this change asserting that three months is a minimum time period to assess how important each new duty is to the overall purpose of the position so the position can be properly classified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 Room 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Lyle Almond at the above address, by phone at 801-538-3391, by FAX at 801538-3081, or by Internet E-mail at lalmond@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007



**Human Resource Management,
 Administration
 R477-4
 Filling Positions**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 30061
 FILED: 06/09/2007, 11:09

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the broad grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6.

Specifically, this rule addresses the requirements in Sections 67-19-16 and 67-19-15.7 for DHRM to manage the process by which employees are recruited, hired and promoted and to do this by rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two written comments were received concerning this rule. One came from the human resource staff within the Department of Human Services (DHS) wanting DHRM to define the phrase "five working days" for recruiting purposes. Rules require a position to be announced for five working days but some agencies operate on a 24/7 basis and may see a working day different from most other agencies. The Utah Public Employees' Association (UPEA) requested a change to the rule governing career mobility programs. They wanted the rule to specify that all employees in career mobility be required to return to their former position or an equivalent position without losing salary considerations.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is the foundation for the recruitment and selection procedures that implement the requirements of Section 67-19-16, generally accepted principles of merit and competitive recruitment practices, and case law. Therefore, this rule should be continued. DHRM did not implement the request from DHS to define more precisely what is meant by "five working days". The current rule provides agencies with needed discretion to define a working day to suit their own needs for recruitments. DHRM had a concern with the UPEA proposal regarding career mobility programs. It would require all employees on career mobility to return to their previous positions making all career mobility assignments temporary. Career mobility programs are designed as important developmental opportunities for employees. This rule is written to allow the possibility for an assignment to become permanent. The UPEA proposal would eliminate an important career opportunity for many employees.

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Room 2120 STATE OFFICE BLDG
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SALT LAKE CITY UT 84114-1201, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007



Human Resource Management, Administration **R477-5** Employee Status and Probation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30055
FILED: 06/09/2007, 11:06

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-16(5) requires agency heads to make hires from hiring lists for probationary periods established by rule and for the Director of the Department of Human Resource Management (DHRM) to make rules establishing probationary periods.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Human resource staff in the Department of Human Services requested that management be allowed to extend the probationary period for a new employee under certain circumstances when the employee is absent for a long period of time during probation. They reason that probation is a period for management to evaluate whether a new employee can perform the job duties. A long absence may severely restrict the ability of management to make a good judgment. DHRM agreed and amended the rule to allow management to extend the probationary period when the employee is absent for reasons defined in the federal Family Medical Leave Act. Human resource staff from several agencies also requested that the rule on probationary periods be amended to clarify that a probationary termination is outside the normal termination process for career service employees and that the probationary employee has no due process rights as a result. DHRM agreed and made the appropriate amendments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule implements the requirements of Section 67-19-16 regarding probationary periods. The probationary period is the final step in the selection process and the gateway to merit status. Therefore, this rule should be continued. DHRM agreed with all written proposals to amend this rule.

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EFFECTIVE: 06/09/2007

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**Human Resource Management,
Administration
R477-6
Compensation**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30060
FILED: 06/09/2007, 11:08

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-12 requires the Department of Human Resource Management (DHRM) to work with the Governor to establish pay plans for each position in the classified service (Subsection 67-19-12(4)) and to issue rules for the administration of pay plans (Subsection 67-19-12(4)(c)(iii)). Section 67-19-12.5 defines the flexible benefit program authorized by the Internal Revenue Service and provides for DHRM to make rules for its administration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Governor's Office of Planning and Budget (GOPB) and the Department of Human Services (DHS) requested language for salary increases in two situations. One was to limit salary step increases to only when appropriated by the legislature. The second request was to make employees on longevity eligible for across the board cost of living allowance's or other pay plan adjustments if authorized by the legislature for all employees. The Utah Public Employees' Association (UPEA) requested language requiring that administrative salary increases only be granted when they do not cause equity concerns. The Department of Natural Resources (DNR) human resources staff requested that DHRM allow a pay increase for an employee who transfers to be granted on the same day as the transfer be deleted and replaced with language allows management to decrease the salary of a transferring employee who moves to a position with a lower range.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 67-19-12 provides the legal basis for the state compensation system and requires that DHRM design pay plans and write rules to

implement the section. Due to the critical nature of employee compensation for the state budget and for the employee, this rule is monitored closely by all interested parties and is perhaps the most researched of the DHRM rules. Many provisions of this rule represent agreements made with interested parties over long periods of time. At the same time, DHRM is very sensitive to the budgetary and legal implications when considering proposed changes. Therefore, this rule should be continued. The request from GOPB and DHS to limit merit raises to those appropriated by the legislature was not accepted because language is already in rule limiting across the board merit raises contingent on legislative appropriation. This additional language would stop step increases when employees are promoted or rewarded for good performance. The second request from GOPB and DHS was not accepted because longevity status is well defined in the code which grants adjustments according to a fixed formula. The request from UPEA was not accepted because one of the primary purposes of administrative salary increases is to reward employees for good performance with a step increase. The suggestion from DNR was modified to allow a manager to adjust the salary of an employee who transfers to another position. All transfers do not include a salary increase. Some are lateral with no change in salary and others are downward and may require a salary decrease in defined situations.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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**Human Resource Management,
Administration
R477-8
Working Conditions**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

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FILED: 06/09/2007, 11:08

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule addresses state and federal laws that require implementation through rule for clarification or administrative purposes. The Fair Labor Standards Act (FLSA) and the regulations associated with it in 29 CFR parts 500-899 (1996) require conformance by employers and provide for certain degrees of flexibility that must be addressed in rule. Section 67-19-6.7 defines overtime benefits for state employees in addition to the FLSA and requires rulemaking by the Department of Human Resource Management (DHRM). Section 67-19-6 provides broad rulemaking authority for DHRM and is the legal provision for all other sections of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Health (DOH) and the Department of Human Services (DHS) human resource staffs recommended language that allows excess hours earned to be used the same as compensatory hours instead of annual leave hours. The DHS human resource staff also requested that the approval process for completing and signing time sheets be placed in rule to show that management did not authorize overtime. DHS also requested that language be placed in rule defining an employee's right to be given time to vote in an election in certain circumstances consistent with Section 20A-3-103. This was adopted.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The FLSA provisions in this rule are essential to the proper management of the state's human resource management system. Without them, the state faces serious and costly legal liability having experienced already two lawsuits on these matters in the past 20 years. These include the subsections dealing with work period, lunch and breaks, and overtime. Other subsections are common but important provisions covering employee obligations to the state as the principle employer. Therefore, this rule should be continued. The recommendation from DHS and DOH was not implemented because compensatory hours are not a property right for FLSA-exempt employees whereas annual leave hours are a property right. This recommendation confuses this distinction. The request from DHS concerning time sheets was not adopted because this is not consistent with the FLSA.

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EFFECTIVE: 06/09/2007



**Human Resource Management,
Administration
R477-9
Employee Conduct**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

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**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 67, Chapter 16, Utah Ethics Act, requires employees to notify management of potential conflicts in interest with employment with the State. Section 67-19-19 governs political activity of certain classes of state employees. The Department of Human Resource Management (DHRM) implements these requirements for the executive branch of state government via rulemaking authority granted by Section 67-19-6 which contains a general grant of rulemaking authority to DHRM to govern the human resource management system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2001, DHRM proposed to delete a section that prohibited employees from having weapons in their possession while at work. A rules hearing was scheduled to take public comment on this issue. A total of 185 written comments were received concerning this proposal with 174 in support and 11 opposed; 18 comments came from state employees. At the hearing, 21 comments were received. Fourteen supported removing the section of the rule while seven were opposed; five of these people identified themselves as state employees. Most of the comments supporting removal of the section pointed out that DHRM did not have a clear enough legal mandate to have such a requirement. After consultation with the Governor's Office and the Attorney General, DHRM agreed and proceeded with the removal of the section.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains important provisions governing general employee behavior on the job including conflicts of interest and the acceptable use of state resources. It also deals with provisions in the law governing

employee behavior off the job such as political activity and second jobs. Therefore, this rule should be continued.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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**Human Resource Management,
Administration
R477-10
Employee Development**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30050
FILED: 06/09/2007, 11:04

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-6 contains a general grant of rulemaking authority for human resource management and a specific charge concerning training programs and who has authority for certain types of training. Section 67-19-12 governs pay plans and gives authority to the Department of Human Resource Management (DHRM) to write rules governing how employees receive step advances on the salary range. Performance may be considered in writing these rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The vast majority of written comments for this rule focused on the corrective action provisions and came primarily from two sources, the Utah Public Employees' Association (UPEA) and human resource staff from the various departments. Many comments from UPEA requested a more tightly defined process for corrective action specifying that managers be required to include four components: closer supervision, period of constant review, opportunity for remediation, and a mid point evaluation. Currently, management is required to include only one or

more of these and other components in the plan. UPEA also asked that the rule be amended to require management to give the employee the entire time period specified in the corrective action plan to remedy performance unless significant evidence shows that continuation of the corrective action will not result in improvement. DHRM agreed and made the appropriate amendment. A request from the Department of Human Services (DHS) staff asked for more specific language on the documentation of corrective action. Another request from DHS asked that management be required to have regular meetings with employees on corrective action. Human resource staff from the Tax Commission asked that all corrective action plans be written. Several comments were received asking that language be incorporated making it more clear that corrective action is an option available to management to correct job performance and not mandatory in all cases. DHRM generally agrees with these recommendations and has amended these provisions many times to clarify this policy. Human resource staff from the Tax Commission requested more explicit language on the repayment of educational assistance when an employee leaves within one year of receiving the assistance. In 2004, an employee from the Department of Transportation petitioned DHRM to remove the rule that required an employee to declare agreement or disagreement with the performance rating. Research was submitted to DHRM showing that this is not part of typical performance reviews. One important reason is that a general statement is not specific enough and can create significant legal questions in litigation. DHRM agreed and deleted the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets parameters for agencies in conducting important development activities for employees including evaluation of their performance, corrective actions to save employees whose performance is not up to standard, and training and educational assistance. Documentation of employee performance and agency attempts to help an employee improve performance are important records in disciplinary proceedings and justification of employee salary increases. Corrective action is an administrative device used early in the process of dealing with poor performance before applying more formal and legally defined procedures. Therefore, this rule should be continued.

DHRM did not adopt the recommendation from UPEA for a more tightly defined process. When confronted with these requests, DHRM has always held that at this point in the process management needs maximum flexibility. Examples include situations where an employee works mostly in the field and management simply does not have the opportunity to communicate frequently enough to comply with the UPEA recommendations. In another example, a skill deficit may be responsible for the substandard performance and training is the only needed remedy. DHRM did not adopt the recommendation from DHS for more specific language for documentation feeling that the level of specificity is more appropriately set at the agency level since agencies may have very different needs. Law enforcement, for example, typically requires specific records in an employee's files that are not used by other agencies. The recommendation from DHS to

require regular meetings was not adopted. There are many situations in state government where this is impossible given the amount of time many employees spend in the field. DHRM disagreed with the Tax Commission recommendation that all corrective actions be written pointing out that this may not be necessary in certain situations when a simple solution can solve the problem without all the work required in a formal written document. DHRM did not adopt the recommendation from the Tax Commission for more specific language in rule regarding the repayment of educational assistance when an employee terminates. This is seen as a policy more appropriately set by each agency.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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Human Resource Management, Administration **R477-11** Discipline

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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FILED: 06/09/2007, 11:07

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-18 requires that the Department of Human Resource Management (DHRM) write rules governing disciplinary processes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Human resource staff in the Department of Health (DOH) requested that employees covered by the Fair Labor Standards Act (FLSA) not be subject to suspensions shorter than one week. Human Resource staff in the Department of Human Services (DHS) requested that language in the discipline rules make it clear

that these rules are not applicable to noncareer service employees regardless of the reason. DHRM agreed and made appropriate amendments. The Utah Public Employees' Association (UPEA) requested that provision be placed in rule requiring progressive discipline where appropriate. UPEA also requested that management be required to consider certain factors in all cases before imposing discipline. This was not adopted. Human resource staff in the Department of Natural Resources (DNR) requested that language be added that allows discipline when an employee shows disrespect to management.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule fulfills DHRM's responsibility to write rules governing the disciplinary process, Subsection 67-19-18(2). This is an important and technical part of the due process protections afforded to employees by the career service system. Failure to set statewide standards leaves the state open to serious liability. Therefore, this rule should be continued. The DOH request for rules allowing suspensions shorter than one week was not adopted. This is inconsistent with how FLSA exempt employees are treated in other parts of the rules. DHRM did not adopt the UPEA recommendation for progressive discipline. The principles of discipline, including progressive discipline, are well established in case law and are based on the merits of each case. This is best left to the grievance and appeals system and not addressed in DHRM rule. The UPEA request that management consider certain factors in all disciplinary situations was not adopted. There are situations where the severity of an infraction is so severe that management is justified in moving directly to discipline. Neither code nor case law requires this step. The DNR recommendation for discipline of a disrespectful employee was not adopted for two reasons; first, there is no legal provision that requires that an employee show respect; and second, this requirement is almost impossible to define for legal purposes.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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Human Resource Management,
Administration
R477-12
Separations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30053
FILED: 06/09/2007, 11:05

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the general rulemaking authority granted to the Department of Human Resource Management (DHRM) in Section 67-19-6. This rule establishes procedures by which an employee is separated from state employment and thus contains important legal protections for employees and the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Public Employees' Association (UPEA) has repeatedly requested that the state adopt a bumping process when administering a reduction in force. This is similar to the process used in typical merit systems when a large number of employees have to be terminated due to budget problems or decrease in workload. A similar request was made in 2003.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Separation from employment is a major event for an employee and one that is frequently contested if forced by the employer. As a result, a great deal of precedent has been established by the courts, especially for government merit systems. This rule addresses all the pertinent issues in order to protect both the employee's rights and the state's discretion to terminate. Therefore, this rule should be continued. DHRM has resisted the UPEA request for "bumping" because it is cumbersome, difficult to administer, and not required by Code. In response to previous discussions, DHRM did amend the rule to allow bumping at the discretion of agency management. This option is rarely used by management and DHRM feels it places unusual administrative burden on management and cost on the career service system to require it.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

Human Resource Management,
Administration
R477-13
Volunteer Programs

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30057
FILED: 06/09/2007, 11:07

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-20-8 requires the Department of Human Resource Management (DHRM) to establish a volunteer program for the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received in the previous five-year period regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by Section 67-20-8. Therefore, this rule should be continued.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

Human Resource Management,
Administration
R477-15
Unlawful Harassment Policy and
Procedure

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30054
FILED: 06/09/2007, 11:06

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the general grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Public Employees' Association (UPEA) requested that the rule be amended to provide for the transfer of one of the parties in an investigation of unlawful harassment.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Originally this rule was written to address legal liability the state was facing concerning sexual harassment suits. When the Equal Employment Opportunity Commission (EEOC) broadened sexual harassment to unlawful harassment, the state did the same under advice of the Division of Risk Management and legal counsel. This is an important rule that protects employees from harassing behavior. It also protects the state from costly legal action. Therefore, this rule should be continued. DHRM did not amend this rule to accommodate UPEA's request to transfer one of the parties in a sexual harassment investigation. This is not necessary since these actions are already permitted by other rules under the definition for reassignment and the rule for administrative leave.

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AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 06/09/2007

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Human Services, Substance Abuse and
Mental Health
R523-20
Division Rules of Administration

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30038
FILED: 06/05/2007, 16:26

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-15-105 establishes the Division of Substance Abuse and Mental Health Board. The Board is given authority to establish necessary rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In January 2007, this rule was amended. Section R523-20-2 was moved into Section R523-1-5 to streamline the fee collection process in both the community mental health centers and the community substance abuse centers. During the review of Section R523-20-2, no public comment was received by the Division. On a broader scale, Rule R523-20 as a whole has not received public comment since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides administrative guidance for the State of Utah's substance abuse programs as determined by the Substance Abuse and Mental Health Board. Guidance includes: the allocation of funds for local substance abuse programs including a funding formula for a rural differential; training and research priorities to be met by the Division and reporting obligations on research information; definitions of prevention and treatment programs; funding of medication detoxification programs; contracting practices with local substance abuse authorities and subcontracting practices to be met by local authorities; the requirement for local authorities to meet a maintenance of efforts in yearly funding allotments; distribution criteria for DUI funds; the requirement of a 20% match to general funds from the local county tax revenues; and required use of the Addiction Severity Index to assess addiction by consumers and placement criteria determined through the standards set by the American Society of Addiction. The Substance Abuse and Mental Health Board continues to support the guidance criteria set forth in this rule. Administratively speaking, this rule sets all the financial and programming standards and

expectations for the local substance abuse authorities, therefore, it should continue.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
Room 209
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

AUTHORIZED BY: Mark I Payne, Director

EFFECTIVE: 06/05/2007

◆ ————— ◆

Human Services, Juvenile Justice
Services
R547-6
Youth Parole Authority Policies and
Procedures

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30032
FILED: 06/04/2007, 08:11

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-7-501 through 62A-7-507 created within the Division a Youth Parole Authority, composed of full and pro-tempore members. The authority will determine parole release, rescission, revocation, and termination of parole for youth offenders committed to secure care within the division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to be responsible for the operation of the Youth Parole Authority. Therefore, this rule should be continued. Changes will be made in the future to bring the rule into compliance with Utah Code, along with nonsubstantive Code reference changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
JUVENILE JUSTICE SERVICES
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov

AUTHORIZED BY: Dan Maldonado, Director

EFFECTIVE: 06/04/2007

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Human Services, Juvenile Justice
Services
R547-13
Guidelines for Admission to Secure
Youth Detention Facilities

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30033
FILED: 06/04/2007, 08:17

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to Subsection 62A-7-104(3)(a) and Section 62A-7-202, the division is responsible to establish and administer statewide guidelines for admission to secure and home detention.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division continues to use these guidelines as required to admit youth into secure detention facilities. Therefore, this rule should be continued. Nonsubstantive changes are forthcoming.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
JUVENILE JUSTICE SERVICES
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov

AUTHORIZED BY: Dan Maldonado, Director

EFFECTIVE: 06/04/2007



Public Safety, Fire Marshal
R710-2
Rules Pursuant to the Utah Fireworks
Act

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30031
FILED: 06/04/2007, 07:45

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Fireworks Act is constituted in Sections 53-7-220 through 53-7-225. In Section 53-7-204, the Utah Fire Prevention Board is authorized to enact rules to regulate the placement and discharge of display fireworks, set minimum standards for the retail storage and sale of fireworks, and establish proof of competence for an individual to place and discharge display fireworks.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-2 has been amended five times since the last five-year review. There have been no written comments received during the last five-year review period from any of the five amendments that were completed. It has been the policy of the Fire Prevention Board for many years to notify everyone affected by the rule change and have those involved participate in the Board meetings to try to resolve any concerns before the formal filing of the rule with the Division of Administrative Rules.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Fireworks that are improperly used or illegal can cause physical harm to the human user, as well as cause fires that can lead to

tremendous property damage. The continuation of this rule is necessary to provide safety in the retail sale of state-approved fireworks, storage of fireworks, and proper display and discharge of Class B fireworks as a display or special effects technician.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

EFFECTIVE: 06/04/2007



Public Safety, Fire Marshal
R710-3
Assisted Living Facilities

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30034
FILED: 06/04/2007, 10:17

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-7-204 authorizes the Utah Fire Prevention Board to enact rules for the prevention of fire and for the protection of life and property in an assisted living facility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-3 has been amended four times since the last five-year review in 2002. There have been no written comments received from these four amendments. It is the policy of the Utah Fire Prevention Board to notify everyone affected by the proposed amendments and invite them to the Board meetings to resolve any concerns before the proposed rule is filed with the Division of Administrative Rules. This usually eliminates the need for written comments to a Board administrative rule action.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: Rule R710-3 is the administrative rule that provides a minimum degree of fire and life safety for those people who reside in and are provided a protected living arrangement on a daily basis because of physical and/or mental incapacitation that prohibits a fully independent lifestyle. This rule needs to be continued due to the dependent needs these clients have on those that provide them care and assistance and the inability of the clients to provide full protective care for themselves.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

EFFECTIVE: 06/04/2007

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Public Safety, Fire Marshal
R710-4

**Buildings Under the Jurisdiction of the
 State Fire Prevention Board**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 30043
 FILED: 06/08/2007, 12:49

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-7-204 specifically authorizes the Fire Prevention Board to enact rules and establish minimum standards for the prevention of fire and for the protection of life and property against fire and panic in state-owned facilities, institutional occupancies, public and private schools, colleges and universities, and other places of assembly.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-4 has been amended nine times since the last five-year review in 2002. There were two written comments received to the enacted rule, both on the accepted use of "Time Out Rooms" for those needing behavioral adjustments. The Board made changes to

the currently adopted rule on "Time Out Rooms" to be consistent with the currently adopted Risk Management and Utah State Office of Education standards. The two comments received came from State Risk Management and the Utah State Office of Education requesting consistency in the rule application. The Board then made those amendments to be consistent.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: R710-4 provides a minimum degree of fire and life safety in any publicly-owned building, public and private schools, colleges and universities, institutional occupancies to include asylums, jails, prisons, hospitals, and any place of assembly where 50 or more people may gather for amusement, entertainment, instruction or education. This rule has tremendous impact on fire and life safety in many occupancies throughout the State of Utah, where people gather together in assemblage, are restricted to leave a facility as they desire by restraint or impairment, or where children are gathered together for educational purposes or day care. This rule should be continued for it's important requirements in fire and life safety.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

EFFECTIVE: 06/08/2007

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Public Safety, Fire Marshal
R710-9
**Rules Pursuant to the Utah Fire
 Prevention Law**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 30044
 FILED: 06/08/2007, 13:52

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-7-204 specifically

authorizes the enactment of rules for adopting a nationally recognized fire code and the specific edition of that code, adopting and updating several standards that are incorporated by reference, amending the adopted fire code, deputizing special deputy state fire marshals, conducting board meetings, enforcing State Fire Marshal rules, and forming several Board subcommittees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-9 has been amended 15 times since the last five-year review in 2002. There have been no written comments received during the last five-year period with regard to proposed rule amendments. It has been the policy of the Utah Fire Prevention Board to notify everyone affected by the proposed amendments to the rule and invite participation by those affected individuals or businesses. This policy has proven very successful in the fact that consensus is normally achieved before the enactment of the rule is completed and written comments are seldom received during the formal filing process.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R710-9 adopts the International Fire Code (IFC) which has been legislatively mandated for towns, cities, counties, fire protection districts, and the State of Utah to be the state fire code. It is also the

rule that sets procedures to amend the IFC, local ordinance requirements, specific conduct of Board members at Board meetings, procedures to deputize special deputy state fire marshals, enforcement of rules of the Board, and the establishment of several Board subcommittees. This is a very necessary rule to provide a statewide fire standard for the citizens of our state. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

EFFECTIVE: 06/08/2007



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Natural Resources

Wildlife Resources

No. 30035: R657-18. Wood Products on Division of Wildlife Resources Lands.

ENACTED OR LAST REVIEWED: 06/20/2002 (No. 25006, 5YR, filed 06/20/2002 at 1:57 p.m., published 07/15/2002).

EXTENDED DUE DATE: 10/18/2007

No. 30036: R657-28. Use of Division Lands - Rights-of-Way, Leases, and Special Use Permits.

ENACTED OR LAST REVIEWED: 06/20/2002 (No. 25005, 5YR, filed 06/20/2002 at 1:55 p.m., published 07/15/2002).

EXTENDED DUE DATE: 10/18/2007

(DAR NOTE: See the proposed repeal of Rule R657-18 under DAR No. 30083. The language is being moved to Rule R657-28. See the proposed amendment to Rule R657-28 under DAR No. 30084, both in this issue, July 1, 2007, of the Bulletin.)

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services

Facilities Construction and Management

No. 29812 (R&R): R23-19. Facility Use Rule.
Published: May 1, 2007
Effective: June 7, 2007

No. 29811 (NEW): R23-20. Free Speech Activities.
Published: May 1, 2007
Effective: June 7, 2007

Human Services

Substance Abuse and Mental Health, State Hospital

No. 29802 (AMD): R525-8. Forensic Mental Health Facility.
Published: May 1, 2007
Effective: June 15, 2007

Insurance

Administration

No. 29824 (AMD): R590-102-9. Individual Resident and Non-Resident License Fees.
Published: May 1, 2007
Effective: June 8, 2007

No. 29684 (AMD): R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.
Published: April 1, 2007
Effective: June 13, 2007

No. 29420 (NEW): R590-240. Exemption of Student Health Programs From Insurance Code.
Published: February 1, 2007
Effective: June 8, 2007

No. 29420 (CPR): R590-240. Exemption of Student Health Programs From Insurance Code.
Published: May 1, 2007
Effective: June 8, 2007

Public Safety

Driver License

No. 29805 (AMD): R708-43. YES or NO Notification.
Published: May 1, 2007
Effective: June 8, 2007

Transportation

Operations, Maintenance

No. 29456 (REP): R918-2. Widening Pavement to Curb and Gutter.
Published: February 15, 2007
Effective: June 6, 2007

Workforce Services

Employment Development

No. 29700 (AMD): R986-100-114a. Determining When a Document is Considered Received by the Department.
Published: April 1, 2007
Effective: June 14, 2007

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2007, including notices of effective date received through June 15, 2007, the effective dates of which are no later than July 1, 2007. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Administration</u>					
R13-2	Access to Records	29771	5YR	04/02/2007	2007-8/119
R13-2	Access to Records	29772	AMD	05/22/2007	2007-8/3
<u>Administrative Rules</u>					
R15-3-5	Statutory Provisions that Require Rulemaking Pursuant to Subsection 63-46a-4(11)	29554	AMD	04/30/2007	2007-6/5
R15-4-10	Estimates of Anticipated Cost or Savings, and Compliance Cost	30111	EMR	07/01/2007	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	29965	5YR	05/24/2007	2007-12/59
R23-19	Facility Use Rules	29964	5YR	05/24/2007	2007-12/59
R23-19	Facility Use Rule	29812	R&R	06/07/2007	2007-9/3
R23-20	Free Speech Activities	29811	NEW	06/07/2007	2007-9/11
R23-25	Administrative Rules Adjudicative Proceedings	29474	AMD	04/11/2007	2007-4/2

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Finance					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	29424	5YR	01/17/2007	2007-4/54
Fleet Operations					
R27-5	Fleet Tracking	29457	5YR	01/29/2007	2007-4/54
R27-6	Fuel Dispensing Program	29515	5YR	02/14/2007	2007-5/19
R27-8	State Vehicle Maintenance Program	29534	5YR	02/21/2007	2007-6/36
R27-10	Identification Mark for State Motor Vehicles	29939	5YR	05/14/2007	2007-11/84
Fleet Operations, Surplus Property					
R28-1	State Surplus Property Disposal	29550	5YR	02/26/2007	2007-6/36
R28-7	Surplus Property Rate Schedule	29946	5YR	05/15/2007	2007-11/84
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R35-2-2	Declining Requests for Hearings	29081	AMD	01/05/2007	2006-20/2
Risk Management					
R37-1	Risk Management General Rules	30046	5YR	06/08/2007	2007-13/140
R37-2	Risk Management State Workers' Compensation Insurance Administration	30047	5YR	06/08/2007	2007-13/140
R37-3	Risk Management Adjudicative Proceedings	30048	5YR	06/08/2007	2007-13/141
Agriculture and Food					
Administration					
R51-2	Administration Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	29405	5YR	01/11/2007	2007-3/56
Animal Industry					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	29506	5YR	02/08/2007	2007-5/19
R58-6	Poultry	29504	5YR	02/08/2007	2007-5/20
R58-8	Testing and Vaccination of Bovine Livestock for Brucellosis Control (5YR EXTENSION)	29512	NSC	06/07/2007	Not Printed
R58-8	Testing and Vaccination of Bovine Livestock for Brucellosis Control	30041	5YR	06/07/2007	2007-13/142
R58-18	Elk Farming	29505	5YR	02/08/2007	2007-5/20
R58-22	Equine Infectious Anemia (EIA)	29503	5YR	02/08/2007	2007-5/21
R58-23	Equine Viral Arteritis (EVA)	29342	NEW	02/28/2007	2007-1/5
Plant Industry					
R68-19	Compliance Procedures	29453	5YR	01/29/2007	2007-4/55
R68-20	Utah Organic Standards	29347	AMD	02/28/2007	2007-1/6
Regulatory Services					
R70-201	Compliance Procedures	29492	5YR	02/02/2007	2007-5/21
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	29507	5YR	02/08/2007	2007-5/22
R70-350	Ice Cream and Frozen Dairy Foods Standards	29499	5YR	02/05/2007	2007-5/22
R70-360	Procedure for Obtaining a License to Test Milk for Payment	29500	5YR	02/05/2007	2007-5/23
R70-530	Food Protection	29632	5YR	03/12/2007	2007-7/149
Alcoholic Beverage Control					
Administration					
R81-1-6	Violation Schedule	29439	AMD	03/30/2007	2007-4/4
R81-1-26	Criminal History Background Checks	29440	AMD	03/30/2007	2007-4/6
Attorney General					
Administration					
R105-2	Records Access and Management	30037	5YR	06/05/2007	2007-13/142
Capitol Preservation Board (State)					
Administration					
R131-3	Use of Magnetometers on Capitol Hill	29952	5YR	05/16/2007	2007-12/60

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce					
<u>Administration</u>					
R151-2	Government Records Access and Management Act Rules	29524	5YR	02/15/2007	2007-5/23
R151-3	Americans With Disabilities Act Rules	29903	5YR	05/01/2007	2007-10/105
R151-33	Pete Suazo Utah Athletic Commission Act Rule	29927	5YR	05/10/2007	2007-11/85
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules.	30118	5YR	06/22/2007	Not Printed
R152-11	Utah Consumer Sales Practices Act	29470	5YR	02/01/2007	2007-4/55
R152-15	Business Opportunity Disclosure Act Rules.	30119	5YR	06/22/2007	Not Printed
R152-20	New Motor Vehicle Warranties	29862	5YR	04/26/2007	2007-10/105
R152-20-2	Definitions	29412	AMD	03/20/2007	2007-3/4
R152-22	Charitable Solicitations Act	29427	AMD	04/02/2007	2007-4/8
R152-22	Charitable Solicitations Act.	30120	5YR	06/22/2007	Not Printed
R152-23	Utah Health Spa Services	29238	AMD	01/23/2007	2006-24/3
R152-23	Utah Health Spa Services.	30121	5YR	06/22/2007	Not Printed
R152-26	Telephone Fraud Prevention Act	29379	AMD	02/23/2007	2007-2/3
R152-26	Telephone Fraud Prevention Act	29594	5YR	03/05/2007	2007-7/149
R152-34	Postsecondary Proprietary School Act Rules	29710	AMD	05/22/2007	2007-8/4
R152-34	Postsecondary Proprietary School Act Rules	30101	5YR	06/15/2007	2007-13/143
R152-42	Uniform Debt-Management Services Act Rules	29413	CPR	05/22/2007	2007-8/114
R152-42	Uniform Debt-Management Services Act Rules	29413	NEW	05/22/2007	2007-3/5
<u>Occupational and Professional Licensing</u>					
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R982-301	Councils.	30139	5YR	06/26/2007	Not Printed
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R986-200-215	Family Employment Program Two Parent Household (FEPTP)	29414	AMD	03/15/2007	2007-3/36
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R994-303	Contribution Rates and Relief of Charges	29956	5YR	05/17/2007	2007-12/69
R994-306-202	Relief of Charges Decisions	29743	NSC	04/12/2007	Not Printed
R994-401	Payment of Benefits	29959	5YR	05/17/2007	2007-12/70
R994-402	Extended Benefits	29958	5YR	05/17/2007	2007-12/70
R994-403	Claim for Benefits	30141	5YR	06/26/2007	Not Printed
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R994-406	Fraud, Fault and Nonfault Overpayments	29963	5YR	05/22/2007	2007-12/71

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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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<u>access to information</u> Administrative Services, Administration	29772	R13-2	AMD	05/22/2007	2007-8/3
	29771	R13-2	5YR	04/02/2007	2007-8/119
<u>accountants</u> Commerce, Occupational and Professional Licensing	29473	R156-26a	5YR	02/01/2007	2007-4/56
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	29737	R277-505-5	NSC	04/12/2007	Not Printed
<u>action plan</u> Public Service Commission, Administration	29377	R746-430	CPR	05/17/2007	2007-7/145
	29377	R746-430	NEW	05/17/2007	2007-2/109

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	29592	R708-35	5YR	03/02/2007	2007-7/186
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	30144	R850-5	5YR	06/27/2007	Not Printed
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	29363	R309-150	AMD	03/06/2007	2007-2/31
	29360	R309-405-4	NSC	03/06/2007	Not Printed
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	29895	R477-15	NSC	05/11/2007	Not Printed
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	29758	R652-3	5YR	04/02/2007	2007-8/131
	29761	R652-4	5YR	04/02/2007	2007-8/131
	29757	R652-5	5YR	04/02/2007	2007-8/132
	29760	R652-20	5YR	04/02/2007	2007-8/133
	29468	R652-20-1600	AMD	03/26/2007	2007-4/36
	29759	R652-30	5YR	04/02/2007	2007-8/133
	29767	R652-40	5YR	04/02/2007	2007-8/134
	29764	R652-50	5YR	04/02/2007	2007-8/134
	29765	R652-70	5YR	04/02/2007	2007-8/135
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	29800	R652-130	NSC	04/03/2007	Not Printed
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	30150	R850-30	5YR	06/27/2007	Not Printed
	30151	R850-40	5YR	06/27/2007	Not Printed
	30152	R850-50	5YR	06/27/2007	Not Printed
	30154	R850-80	5YR	06/27/2007	Not Printed
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	29514	R307-110-20	AMD	05/02/2007	2007-5/13
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	29327	R307-120	AMD	03/09/2007	2007-1/7
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	29663	R307-320	5YR	03/15/2007	2007-7/160
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	29003	R307-325	AMD	03/09/2007	2006-19/35
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	29006	R307-326	CPR	03/09/2007	2007-3/43
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	29004	R307-327	CPR	03/09/2007	2007-3/45
	29004	R307-327	AMD	03/09/2007	2006-19/40
	29666	R307-327	5YR	03/15/2007	2007-7/163
	29667	R307-328	5YR	03/15/2007	2007-7/164
	29005	R307-328	AMD	01/16/2007	2006-19/43
	29150	R307-328-1	NSC	01/16/2007	Not Printed
	29007	R307-332	REP	01/16/2007	2006-19/46
	29008	R307-335	AMD	01/16/2007	2006-19/49
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	29670	R307-341	5YR	03/15/2007	2007-7/166
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<u>appraisals</u> Tax Commission, Property Tax	29630	R884-24P	5YR	03/12/2007	2007-7/197
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	29580	R657-43	NSC	03/13/2007	Not Printed
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	29460	R311-600	NEW	03/26/2007	2007-4/18
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	29006	R307-326	CPR	03/09/2007	2007-3/43
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	29564	R156-70a	5YR	02/27/2007	2007-6/38
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	29848	R311-210	5YR	04/18/2007	2007-10/119
	29577	R311-210	NSC	04/18/2007	Not Printed
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